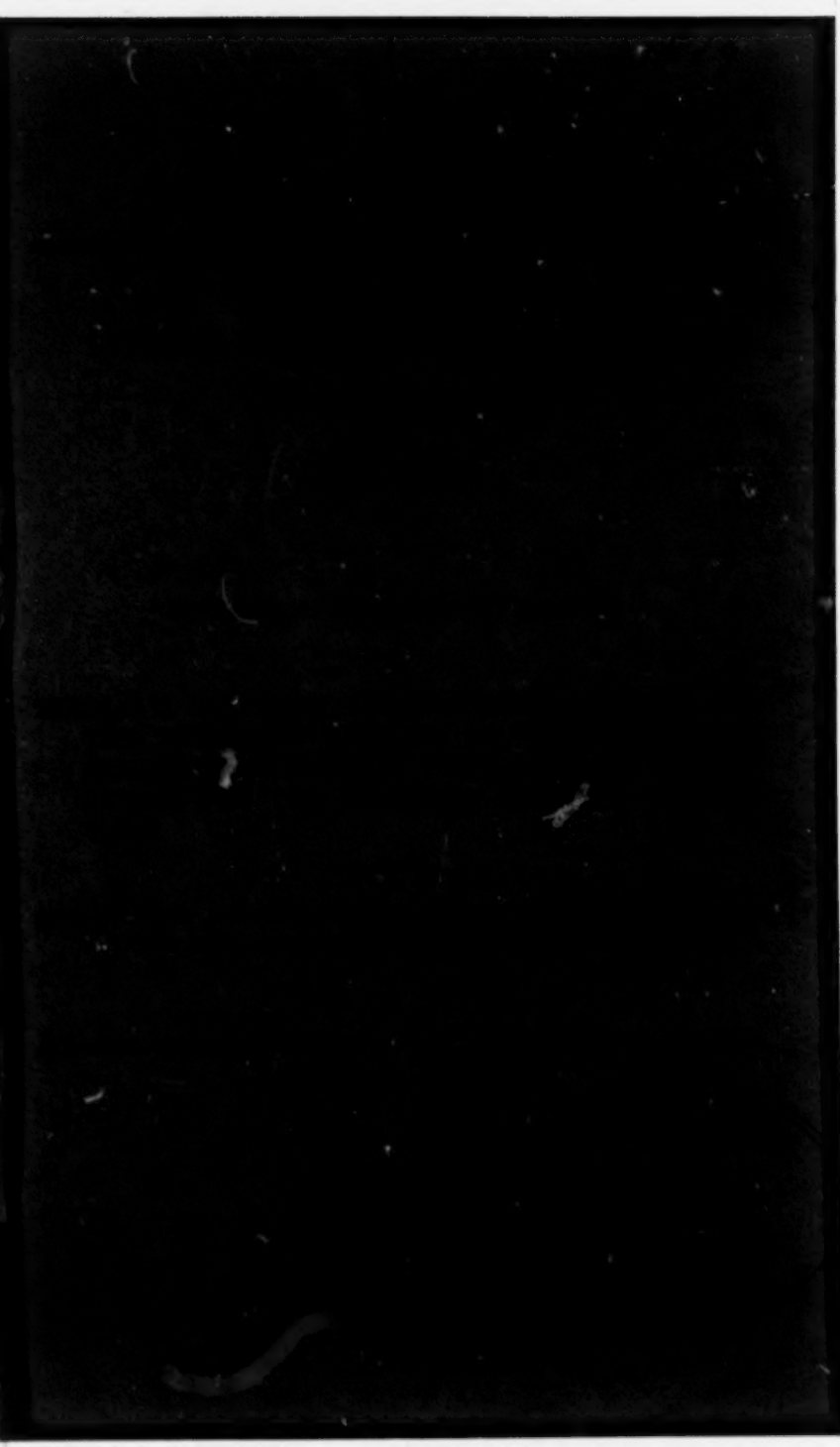


(26,960)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1918.

No. 874.

EDWARD A. RUMELY, APPELLANT,

vs.

THOMAS D. McCARTHY, UNITED STATES MARSHAL FOR THE SOUTHERN DISTRICT OF NEW YORK, AND SAMUEL M. HITCHCOCK, UNITED STATES COMMISSIONER FOR THE SOUTHERN DISTRICT OF NEW YORK.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

INDEX.

	Original.	Print
Citation and service	1	1
Petition for writ of *habeas corpus*	4	2
Exhibit A—Order as to bail, &c	14	7
B—Indictment	15	8
C—Complaint	22	11
Writ of *habeas corpus*	28	14
Return to writ of *habeas corpus*	30	15
Traverse to return	34	17
Writ of certiorari	37	18
Proceedings before commissioner	39	19
Commissioner's certificate	41	19
Stenographer's minutes	42	20

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MARCH 26, 1919.

	Original.	Print
Testimony of Frederick J. Powell	46	22
Edward A. Rumely	72	33
Lawrence McGuire	113	51
Paul H. Fairchild	149	67
Marvin W. Wynne	155	70
Edward A. Rumely (resumed)	162	73
Alfred J. Clayton	263	118
Harold Harper	298	134
Horace O. Kilbourn	314	141
Edward A. Rumely (resumed)	329	148
John S. Henry	340	153
Edgar Rypinski	342	154
Edward A. Rumely (resumed)	357	161
Alfred J. Clayton	365	165
Motion to dismiss	367	166
Decision of commissioner	373	168
Defendant's Exhibit A—Indictment	376	169
B—Indictment	386	174
D—Report to alien property custodian	399	183
E—"Expense of Administration"	406	192
F—Bulletin of information	407	192
G—By-Laws	408	193
H—Note	409	193
I—Note	415	196
J—Note	416	197
K—Note	417	197
Defendant's Exhibits L, M, and N—Leases	418	197
Defendant's Exhibit O—Account	419	198
Government's Exhibit 1—Indictment	420	199
2—Report	421	199
3—Letter	422	199
Government's Exhibits 4, 5, 6, and 7—Notes	423	199
Government's Exhibits 8 and 9—Certificates of incorporation, &c.	424	199
Opinion of Mayer, J.	427	202
Order dismissing writ of *habeas corpus*, &c.	436	206
Petition for appeal	440	208
Order allowing appeal	443	209
Assignment of errors	445	210
Citation (copy)	451	213
Præcipe for record	454	214
Stipulation as to record	457	215
Clerk's certificate	459	216

1 In the Supreme Court of the United States.

EDWARD A. RUMELY, Appellant,

against

THOMAS D. McCARTHY, United States Marshal in and for the Southern District of New York, and Samuel M. Hitchcock, United States Commissioner for the Southern District of New York, Respondents.

In the Matter of the Petition of EDWARD A. RUMELY for Writs of Habeas Corpus and Certiorari.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the above-named Thomas D. McCarthy, United States Marshal in and for the Southern District of New York, and Samuel M. Hitchcock, Esquire, United States Commissioner for the Southern District of New York:

You and each of you are hereby cited and admonished to be at the Supreme Court of the United States to be holden in the City of Washington in the District of Columbia on the 6th day of March, 1919, pursuant to the appeal duly allowed by the United States District Court for the Southern District of New York, and filed in the Clerk's office of said court on the 5th day of February, 1919, wherein the above-named Edward A. Rumely is appellant and you are appellees, to show cause, if any, why the final order of the said District Court rendered against the said appellant as in said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that respect.

2 Witness the Honorable Learned Hand, Judge of the District Court of the United States, this 5th day of February, 1919.

JULIUS M. MAYER,
Judge of the District Court of the United States.

3 [Endorsed:] M 3—399. In the Supreme Court of the United States. Edward A. Rumely, Appellant, against Thomas D. McCarthy, United States Marshal in and for the Southern District of New York, and Samuel M. Hitchcock, United States Commissioner for the Southern District of New York, Respondents. Citation. U. S. District Court, S. D. of N. Y. Filed Feb. 5, 1919. Powell, Wynne, Lowrie & Ruch, Attorneys for Appellant, Office and Post Office Address: No. 165 Broadway, Borough of Manhattan, New York City. Due and timely service of a copy of the within citation is hereby admitted. Francis G. Caffey, Atty. for Resp. February 5, 1919.

4 In the District Court of the United States for the Southern District of New York.

EDWARD A. RUMELY, Petitioner,

against

THOMAS D. McCARTHY, United States Marshal in and for the Southern District of New York, and Samuel M. Hitchcock, United States Commissioner for the Southern District of New York, Respondents.

In the Matter of the Petition of EDWARD A. RUMELY for Writs of Habeas Corpus and Certiorari.

To the District Court of the United States for the Southern District of New York:

The petition of Edward A. Rumely respectfully shows:

I. That your petitioner is a citizen of the United States and a citizen and resident of the Southern District of New York.

II. That your petitioner is imprisoned and restrained of his liberty, and detained by color of the authority of the United States, in the custody of Thomas D. McCarthy, Esquire, United States Marshal in and for the Southern District of New York to wit: in the Borough of Manhattan, in said District.

III. That the sole claim or authority by virtue of which the said Thomas D. McCarthy, Marshal as aforesaid, so restrains and detains your petitioner is a certain commitment in writing, a copy of which is hereto annexed marked Exhibit "A," and that your petitioner is not detained by virtue of any judgment, decree or final order of any Court.

5 IV. That on the 10th day of December, 1918, at the City of New York, in said Southern District of New York, proceedings were instituted before Samuel M. Hitchcock, Commissioner of the District Court of the United States for said District, for the removal of your petitioner to the District of Columbia to be tried upon an indictment alleged to have been returned by the Grand Jury in and for said District of Columbia, a copy whereof is hereto annexed and made a part hereof, marked Exhibit "B," said proceedings being instituted upon a complaint in writing purporting to be signed and sworn to by Harold Harper, an assistant United States Attorney for the said District, a copy of which is hereto annexed marked Exhibit "C."

V. That on said 10th day of December, 1918, your petitioner appeared before the said Samuel M. Hitchcock, Commissioner as aforesaid, and applied for an examination in pursuance of the rights and privileges accorded him by Section 1014 of the Revised Statutes of the United States, which was accorded him, and that such examination was begun before said Samuel M. Hitchcock, Commissioner as aforesaid, on said 10th day of December, 1918, and was concluded on the 18th day of January, 1919, your petitioner being meanwhile

paroled pending the conclusion of such examination and decision thereon.

VI. That upon the said examination, the United States Attorney introduced in evidence an exemplified copy of the indictment above mentioned and called Frederick J. Powell, as a witness to testify with respect to the identity of the defendant named in said indictment, and rested its case.

VII. That counsel for your petitioner thereupon moved for your petitioner's discharge on the ground that the said indictment charged no crime or offense against the laws of the United States and failed to charge any crime or offense cognizable by the Court of the United States in the District of Columbia and that the evidence given
6 by the Government upon the said examination had failed to show any such offense against the laws of the United States and had failed to show that any offense had been committed cognizable by the Court of the United States in the District of Columbia, and that the Commissioner was thereupon without jurisdiction in the premises, and that this motion was denied.

VIII. That counsel for your petitioner then introduced in evidence before the said Commissioner, the following papers and documents, to wit:

A copy of a report made by your petitioner to the Alien Property Custodian on the 4th day of December, 1917.

A copy of the report of the Alien Property Custodian to the President of the United States being House Document No. 840.

A copy of a Bulletin of Information of the Alien Property Custodian, dated June 8, 1918.

A copy of the By-Laws of the S. S. McClure Newspaper Corporation.

A promissory note dated June 1, 1915, for the principal sum of $750,000; a promissory note dated January 4, 1917, for the principal sum of $551,700; a promissory note dated February 20, 1917, for the principal sum of $100,000; and a promissory note dated April 19, 1917, for the principal sum of $50,000; all of said notes being made by your petitioner Edward A. Rumely and payable to one Walter Lyon.

A lease by the James McCreery Realty Corporation to A. Mitchell Palmer, Alien Property Custodian, covering rooms on the fifth story of the building known as 110 W. 42d Street, New York City, for the period May 1, 1918, to June 31, 1918; a lease by the said
7 James McCreery Realty Corporation to A. Mitchell Palmer, Alien Property Custodian, covering the fifth story of the building known as 110 W. 42d Street, New York City, for the period July 1, 1918 to April 30, 1919, and a lease by the said James McCreery Realty Corporation to A. Mitchell Palmer, Alien Property Custodian, covering certain rooms in the sixth story of the building known as 110 W. 42d Street, New York City, for the period December 16, 1918 to April 30, 1919.

A schedule showing the receipts and disbursements of the S. S. McClure Newspaper Corporation for the month of December, 1917.

And, the following named witnesses, to wit: your petitioner, Ed-

ward A. Rumely, Lawrence McGuire, Paul H. Fairchild and Marvin W. Wynne were duly sworn before the said Commissioner, and they and each of them testified to the facts set forth in the official Stenographer's Minutes of the proceedings had before said Commissioner.

That the said proof and evidence, both oral and documentary was offered to maintain the issues in this proceeding by your petitioner to be maintained and to show that your petitioner did not commit the offense charged in said indictment and did not commit the offenses so charged in the District of Columbia, and that there was no probable cause to believe him guilty of any offense against the laws of the United States and that the said indictment was null and void and that no crime was charged against him cognizable and triable in the District of Columbia.

IX. That thereafter the United States Attorney offered and introduced in evidence before the said Commissioner the following papers and documents, to-wit:

A photostatic copy of a report of Edward A. Rumely to the Alien Property Custodian, dated December 4, 1917.

8 A copy of a letter of Edward A. Rumely addressed to the Alien Property Custodian, dated December 4, 1917.

A photostatic copy of a report of S. Walter Kaufmann to the Alien Property Custodian.

Duplicate originals of certain promissory notes made by your petitioner Edward A. Rumely and payable to Walter Lyon, to wit: a promissory note dated June 1, 1915, for the principal sum of $750,000; a promissory note dated January 4, 1917, for the principal sum of $750,000; a promissory note dated February 20, 1917, for the principal sum of $100,000; and a promissory note dated April 19, 1917, for the principal sum of $50,000.

A copy of the Certificate of Incorporation of the S. S. McClure Newspaper Corporation filed and recorded in the office of the Clerk of the County of New York on May 20, 1915.

A copy of the Certificate of Amendment of the Certificate of Incorporation of the S. S. McClure Newspaper Corporation filed and recorded in the office of the County Clerk of New York on May 27, 1915.

And the following named witnesses, to wit: Horace A. Kilbourn, John S. Henry, Edgar Rypensky, your petitioner, Edward A. Rumely, and Alfred J. Clayton were duly sworn before the said Commissioner at the instance of the United States Attorney in behalf of the United States, and they and each of them testified to the facts set forth in the Official Stenographer's Minutes in the proceedings had before such Commissioner.

X. That in the course of the said hearings before the said Commissioner, your petitioner, to establish certain of the issues by him to be maintained, to wit, that there is and was no probable cause to believe him guilty of an offense against the laws of the United

9 States cognizable by the Court of the United States in the District of Columbia, offered in evidence in his behalf the following documents, to wit:

A certified copy of an indictment, No. 14201, 1918, returned by the Grand Jury in and for the Southern District of New York, against Edward A. Rumely, filed in the United States District Court on August 2, 1918.

A certified copy of an indictment No. 14202, 1918, returned by the Grand Jury for the Southern District of New York against Edward A. Rumely, and one S. Walter Kaufmann, filed in the United States District Court on August 2, 1918.

A certified copy of an order of the United States District Court, Augustus N. Hand, dated New York, December 5, 1918, in a case of United States of America v. Edward A. Rumely No. 14201, and in the case of United States of America against S. Walter Kaufmann and Edward A. Rumely, No. 14202, all of said documents being pertinent to the said issue, as your petitioner is informed and advised by counsel, and the said Commissioner refused to permit such evidence to be introduced before him.

XI. That the foregoing, together with the testimony and other proceedings appearing in the Stenographer's Minutes embrace all the proof before the said Commissioner, and as your petitioner is informed and believes, all the evidence upon which he claims the right to issue the commitment by virtue of which your petitioner is detained.

XII. That at the close of the said examination, counsel for your petitioner moved the said Commissioner for your petitioner's discharge upon the ground that the matters before the said Commissioner did not justify or permit a finding that there was probable cause to believe that your petitioner was guilty of any crime or offense against the laws of the United States or any crime or offense cognizable by the court of the United States in the District of Columbia, and upon the ground that there were no matters or facts before the said Commissioner which would accord to him jurisdiction to issue any writ or order for your petitioner's detention, and upon the other ground set forth in the record of the proceedings hereunder, and that thereupon said Commissioner issued his order of commitment hereinabove referred to and marked Exhibit "A," and that thereupon and upon the authority thereof, the said Thomas D. McCarthy took your petitioner into custody and now holds him in custody and as your petitioner is informed and believes the said order thus issued is the sole cause of pretense for the imprisonment of your petitioner by the said Thomas D. McCarthy.

XIII. That your petitioner is advised by counsel and verily believes his imprisonment, restraint and detention are without authority of law whatsoever, and that he is now deprived of his liberty in violation of his rights, privileges and immunities under the Constitution and laws of the United States for the following reasons:

(*a*) That the said Commissioner was without authority, power or jurisdiction under the said Constitution and laws by reason of any of the matters and things contained in the indictment aforesaid, or by reason of anything presented or adduced upon the said

examination to entertain any charge against your petitioner, or to act or proceed in any manner in the premises.

(*b*) The said indictment charges no crime or offense against the laws of the United States, and the evidence given before the
11 said Commissioner and upon which he issued the said commitment failed to show probable cause to believe that your petitioner had been guilty of any such crime or offense.

(*c*) That under and by virtue of Clause 3 of Section 2 of Article 3 of the Constitution of the United States, and by the Sixth Amendment to said Constitution, your petitioner is entitled to be tried and can only be indicted and tried for any alleged offense against the laws of the United States in the State or District in which the offense or offenses which the indictment or indictments charged were committed. The evidence given before the said Commissioner failed to show that your petitioner committed any offense against the laws of the United States in the District of Columbia, and that under the Act of Congress known as the "Trading with the enemy Act" referred to in said indictment none of the acts or things charged by the indictment to be required to be done by your petitioner were required to be done within said District of Columbia, and the evidence given before the said Commissioner showed that your petitioner had not committed any violation of said Act in said District of Columbia.

(*d*) That under and by virtue of the Sixth Amendment to the Constitution of the United States your petitioner is entitled in any criminal prosecution against him, to a speedy trial, and that it appears by the record before the Commissioner that your petitioner has been indicted by the Grand Jury in and for the Southern District of New York and is awaiting trial under the indictments returned by said Grand Jury, and that the removal of your petitioner to be tried under the alleged indictment in the District of Columbia must necessarily result in a denial of the right of
12 your petitioner under said Amendment to the Constitution with respect to a speedy trial upon such indictments in said Southern District of New York.

(*e*) If said Trading with the enemy Act, upon which the said indictment purports to be based, or any other statute of the United States were intended to require a return of the facts stated in said indictment, the same were enacted in excess of any power conferred upon Congress by the Constitution of the United States, and its enforcement with respect to your petitioner is in violation of the rights and immunities accorded by the Fifth Amendment to such Constitution in that it would compel him in a criminal case to be a witness against himself.

(*f*) It appears by the record before the Commissioner that your petitioner is awaiting trial in the District Court of the United States for the Southern District of New York upon two indictments returned by the Grand Jury in said Southern District of New York and it does not appear that the consent of said District Court for the Southern District of New York has been obtained for the removal of your petitioner to be tried under the alleged indictment to the

District of Columbia, and for this reason the Commissioner was without authority and had no jurisdiction to court your petition for removal as aforesaid.

Wherefore your petitioner prays that a Writ of habeas corpus issue, directed to the said Thomas D. McCarthy, or to such other person as then may have your petitioner in custody commanding him to bring the body of your petitioner before the court forthwith; and your petitioner further prays that a writ of certiorari in aid of the said Writ of habeas corpus be issued, directed to the said Honorable Samuel M. Hitchcock, United States Commissioner
13 as aforesaid, commanding that he return all proceedings against your petitioner to this court forthwith for such action as may be proper in the premises.

Dated, January 18th, 1919.

EDWARD A. RUMELY,
Petitioner.

POWELL, WYNNE, LOWRIE & RUCH,
Attorneys for Petitioner.

Office and Post Office Address, 165 Broadway, Borough of Manhattan, City of New York.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

Edward A. Rumely, being duly sworn, deposes and says; that he has read the foregoing petition and knows the contents thereof and that the same is, in all respects, true.

EDWARD A. RUMELY.

Subscribed and sworn to before me this 18th day of January, 1919.

SAML. M. HITCHCOCK,
U. S. Commissioner, Southern District of New York.

14 EXHIBIT "A."

This cause having been heard before me, defendant held to await order of removal, bail $10,000.

Dated, New York, 1/18/19.

SAML. M. HITCHCOCK,
U. S. Commissioner, Southern District of New York.

In default of bail, defendant is hereby com-itted to the custody of the U. S. Marshal for the Southern District of New York, to be delivered by him to the City Prison of the City of New York, and there held to await order of removal.

Dated, New York, 1/18/19.

SAML. M. HITCHCOCK,
U. S. Commissioner, S. D. of N. Y.

15 EXHIBIT "B."

In the Supreme Court of the District of Columbia.

To all to whom these presents come, Greeting:

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered that in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, among others, was the following proceeding, to wit:

16 Filed in Open Court December 2, 1918. J. R. Young, Clerk.

In the Supreme Court of the District of Columbia, Holding a Criminal Term, October Term, A. D. 1918.

DISTRICT OF COLUMBIA, *ss:*

The Grand Jurors of the United States of America, in and for the District of Columbia aforesaid, upon their oath, do present:

That at the time of the commission of the offense hereinafter set forth, the United States of America was at war with the Imperial German Government; and by provision of law in force throughout the United States of America, that is to say, the Act of Congress known as the "Trading with the enemy Act," approved the sixth day of October, in the year of our Lord one thousand nine hundred and seventeen, amongst other things, it became and was the duty of any person in the United States who held, had, or held or had custody or control of, any property, of, for or on behalf of an enemy of the United States of America, to report the fact to the official of the Government of the United States of America known as the Alien Property Custodian, the said report to be made within thirty days after the passage of the aforesaid Act of Congress; that by further provision of said Act of Congress the President of the United States was given power to extend the time for filing the report as aforesaid for an additional period not exceeding ninety days, and pursuant to such power, the President of the United States did extend the time for filing the report as aforesaid until and including, to wit, the twentieth day of December, in the year of our Lord one thousand nine hundred and seventeen, and not beyond.

17 That at the time of the commission of the offense hereinafter set forth the said Alien Property Custodian did have his office for the transaction of business as such Alien Property Custodian at and within the District of Columbia in the United States of America and at no other place;

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present:

That on the sixth day of October, in the year of our Lord one

thousand nine hundred and seventeen, and on each and every day thereafter down to and including the day of this indictment, one Edward A. Rumely, then and there being within the United States of America, did hold, have, and did hold and have the custody and control of, certain property in the United States of America, of, for and on behalf of an enemy of the United States of America, to wit, the said Imperial German Government; that is to say, the said Edward A. Rumely did hold, have, and did hold and have the custody and control of, certain capital stock of the S. S. McClure Newspaper Corporation, a corporation duly organized and existing under and by virtue of the laws of the State of New York; and the said Edward A. Rumely then and there well knew the matters of fact hereinbefore set forth:

And that the said Edward A. Rumely, so knowingly holding, having, and holding and having custody and control of, said property, of, for and on behalf of said enemy, as aforesaid, feloniously, unlawfully, wilfully and knowingly, at the District of Columbia, and within the jurisdiction of this Court, did fail, neglect and omit to report to said Alien Property Custodian, within the period of time prescribed by law as aforesaid and the extension thereof by the President as hereinbefore set forth, the fact that he, the said Edward A. Rumely, held and had, and held and had the custody and control of, the said property, of, for and on behalf of said enemy, as aforesaid; and the said Edward A. Rumely continuously down to and including the day of this indictment has so failed, neglected and omitted to report the said fact to the said Alien Property Custodian; against the form of the statute in such case made and provided, and against the peace and government of the said United States.

18

Second Count.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present:

That at the time of the commission of the offense hereinafter set forth, the United States of America was at war with the Imperial German Government; and by provision of law in force throughout the United States of America, that is to say, the Act of Congress known as the "Trading with the enemy Act," approved the sixth day of October, in the year of our Lord one thousand nine hundred and seventeen, amongst other things, it became and was the duty of any person in the United States who was indebted in any way to an enemy of the United States of America, to report the fact to the official of the Government of the United States of America known as the Alien Property Custodian, the said report to be made within thirty days after the passage of the aforesaid Act of Congress; that by further provision of said Act of Congress the President of the United States was given power to extend the time for filing the report as aforesaid for an additional period not exceeding ninety days, and pursuant to such power, the President of the United States did extend the time for filing the report as aforesaid until and includ-

ing, to wit, the twentieth day of December, in the year of our Lord one thousand nine hundred and seventeen, and not beyond.

19 That at the time of the commission of the offense hereinafter set forth the said Alien Property Custodian did have his office for the transaction of business as such Alien Property Custodian at and within the District of Columbia in the United States of America and at no other place;

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present:

That on the sixth day of October, in the year of our Lord one thousand nine hundred and seventeen, and on each and every day thereafter down to and including the day of this indictment, the said Edward A. Rumely, then and there being within the United States of America, was indebted, in the sum of, to wit, one million four hundred and fifty-one thousand, seven hundred dollars, to an enemy of the United States of America, to wit, the Imperial German Government, as the said Edward A. Rumely then and there well knew;

And that the said Edward A. Rumely, so knowingly being indebted as aforesaid to said enemy, feloniously, unlawfully, wilfully and knowingly, at the District of Columbia, and within the jurisdiction of this Court, did fail, neglect and omit to report to said Alien Property Custodian within the period of time prescribed by law as aforesaid and the extension thereof by the President as hereinbefore set forth, the fact that he, the said Edward A. Rumely was then and there indebted as aforesaid to said enemy; and the said Edward A. Rumely continuously down to and including the day of this indictment has so failed, neglected and omitted to report to the said Alien Property Custodian the said fact that he was indebted as aforesaid to said enemy; against the form of the statute in such case made and provided, and against the peace and government of the said United States.

JOHN E. LASKEY,
Attorney of the United States in and for the District of Columbia.

20 *Authentication.*

Supreme Court of the District of Columbia.

I, John R. Young, Clerk of the said Court, do hereby certify that the copy of indictment, annexed to this certificate, is a true copy of the original on file and of record in said place, and that said original indictment is pending in said Court.

Witness my hand and the seal of said Court the 4th day of December, 1918.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk.*

I, Walter McCoy, Chief Justice of said Court, do certify the foregoing attestatior by John R. Young, Clerk of the said Court, to be in due form.

Witness my hand and seal this 4th day of December, 1918.

WALTER J. McCOY, [SEAL.]
Chief Justice.

I, John R. Young, Clerk of said Court, hereby certify that the Honorable Walter McCoy, whose genuine signature is subscribed to the foregoing certificate, was, at the time of signing and attesting the same, Chief Justice of said Court, duly commissioned and qualified.

Witness my hand and the seal of said Court, this 4th day of December, 1918.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk.*

21 [Endorsed:] Criminal, No. 34521. United States vs. Edward A. Rumely. Violation of Sections 7, 16, Act of October 6, 1917. Witnesses: Frederick A. Borgemeister, Elizabeth K. Kirkel, Joseph Frambach, Henry L. Stoddard, T. Raymond St. John, Edgar Rypinski, William C. Reick, Samuel Untermyer, Caleb M. Van Hamm, Thomas E. Merrillees. A True Bill: Michael A. Griffin, Foreman.

22 EXHIBIT "C."

Complaint.

Before Hon. Samuel M. Hitchcock, U. S. Commissioner for the Southern District of New York.

UNITED STATES OF AMERICA

vs.

EDWARD A. RUMELY.

Removal to the District of Columbia. Violation Sections 7, 16, Act October 6, 1917. Removal Section 1014, R. S. U. S.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Harold Harper, being duly sworn, deposes and says that he is an assistant to the United States Attorney for the Southern District of New York, and is in charge of the above entitled proceeding.

Upon information and belief:

That at the time of the commission of the offense hereinafter set forth, the United States of America was at war with the Imperial

German Government; and by provision of law in force throughout the United States of America, that is to say, the Act of Congress known as the "Trading with the enemy Act," approved the sixth day of October, in the year of our Lord one thousand nine hundred and seventeen, amongst other things, it became and was the duty of any person in the United States who held, had, or held or had custody or control of, any property, of, for or on behalf of an enemy of the United States of America, to report the fact to the official of the Government of the United States of America known as the Alien Property Custodian, the said report to be made within thirty days after the passage of the aforesaid Act of Congress; that by further provision of said Act of Congress the President of the United States was
23 given power to extend the time for filing the report as aforesaid for an additional period not exceeding ninety days, and pursuant to such power, the President of the United States did extend the time for filing the report as aforesaid until and including, to wit, the twentieth day of December, in the year of our Lord one thousand nine hundred and seventeen, and not beyond.

That at the time of the commission of the offense hereinafter set forth, the said Alien Property Custodian did have his office for the transaction of business as such Alien Property Custodian at and within the District of Columbia in the United States of America and at no other place;

That on the sixth day of October, in the year of our Lord one thousand nine hundred and seventeen, and on each and every day thereafter down to and including the second day of December, in the year of our Lord one thousand nine hundred and eighteen, the said Edward A. Rumely, then and there being within the United States of America, did hold, have, and did hold and have the custody and control of, certain property in the United States of America, of, for and on behalf of an enemy of the United States of America, to wit, the said Imperial German Government; that is to say, the said Edward A. Rumely did hold, have, and did hold and have the custody and control of, certain capital stock of the S. S. McClure Newspaper Corporation, a corporation duly organized and existing under and by virtue of the laws of the State of New York; and the said Edward A. Rumely then and there well knew the matters of fact hereinbefore set forth;

And that the said Edward A. Rumely, so knowingly holding, having, and holding and having custody and control of, said
24 property, of, for and on behalf of said enemy, as aforesaid, feloniously, unlawfully, wilfully and knowingly, at the District of Columbia, did fail, neglect and omit to report to said Alien Property Custodian, within the period of time prescribed by law as aforesaid and the extension thereof by the President as hereinbefore set forth, the fact that he, the said Edward A. Rumely, held and had, and held and had the custody and control of, the said property, of, for and on behalf of the said enemy, as aforesaid; and the said Edward A. Rumely continuously down to and including the 2nd day of December, in the year of our Lord one thousand nine hundred and eighteen, has so failed, neglected and omitted to report the said

fact to the said Alien Property Custodian; against the form of the statute in such case made and provided, and against the peace and government of the said United States.

And deponent further alleges upon information and belief as follows:

That at the time of the commission of the offense hereinafter set forth, the United States of America was at war with the Imperial German Government; and by provision of law in force throughout the United States of America, that is to say, the Act of Congress known as the "Trading with the enemy Act," approved on the sixth day of October, in the year of our Lord one thousand nine hundred and seventeen, amongst other things, it became and was the duty of any person in the United States who was indebted in any way to an enemy of the United States of America, to report the fact to the official of the Government of the United States of America known as the Alien Property Custodian, the said report to be made within thirty days after the passage of the aforesaid Act of Congress; that by further provision of said Act of Congress the President of the United States was given power to extend the time for filing
25 the report as aforesaid for an additional period not exceeding ninety days, and pursuant to such power, the President of the United States did extend the time for filing the report as aforesaid until and including, to wit, the twentieth day of December, in the year of our Lord one thousand nine hundred and seventeen, and not beyond.

That at the time of the commission of the offense hereinafter set forth, the said Alien Property Custodian did have his office for the transaction of business as such Alien Property Custodian at and within the District of Columbia in the United States of America and at no other place;

That on the sixth day of October, in the year of our Lord one thousand nine hundred and seventeen, and on each and every day thereafter down to and including the second day of December, in the year of our Lord one thousand nine hundred and eighteen, the said Edward A. Rumely, then and there being within the United States of America, was indebted, in the sum of, to wit, one million four hundred and fifty-one thousand, seven hundred dollars, to an enemy of the United States of America, to wit, the Imperial German Government, as the said Edward A. Rumely then and there well knew;

And that the said Edward A. Rumely, so knowingly, being indebted as aforesaid to said enemy, feloniously, unlawfully, wilfully and knowingly, at the District of Columbia, did fail, neglect and omit to report to said Alien Property Custodian within the period of time prescribed by law as aforesaid and the extension thereof by the President as hereinbefore set forth, the fact that he, the said Edward A. Rumely, was then and there indebted as aforesaid to said enemy; and the said Edward A. Rumely continuously down to and
26 including the 2nd day of December, in the year of our Lord one thousand nine hundred and eighteen, has so failed, neglected and omitted to report to the said Alien Property Custodian the

said fact that he was indebted as aforesaid to said enemy; against the form of the statute in such case made and provided, and against the peace and government of the said United States.

The sources of deponent's information and the grounds of his belief as to each of the matters above set forth are an exemplified copy of the indictment in the case of the United States vs. Edward A. Rumely, filed in the office of the Clerk of the Supreme Court of the District of Columbia on the second day of December, 1918, and the original bench warrant issued upon said indictment on the third day of December, 1918, which said exemplified copy of the indictment and said bench warrant are now in the custody of the United States Attorney for the Southern District of New York.

The said Edward A. Rumely is now within the Southern District of New York.

Wherefore deponent respectfully requests that the said Edward A. Rumely be apprehended and duly removed to the District of Columbia, there to be dealt with according to law.

HAROLD HARPER.

Sworn to before me this 10th day of December, 1918.

SAM. M. HITCHCOCK,
U. S. Commissioner, Southern District of New York.

27 [Endorsed:] M 3—399. District Court of the United States Southern District of New York. Edward A. Rumely, Petitioner, against Thomas D. McCarthy, United States Marshal in and for the Southern District of New York and Samuel M. Hitchcock, United States Commissioner for the Southern District of New York, Respondents. Petition for Writs of Habeas Corpus and Certiorari. Powell, Wynne, Lowrie & Ruch, Attorneys for Petitioner, Office and Post Office Address: No. 165 Broadway, Borough of Manhattan, New York City.

28 The President of the United States of America to Thomas D. McCarthy, United States Marshal for the Southern District of New York, and to any person having custody of Edward A. Rumely under the authority of said United States Marshal, Greeting:

We command you that you have the body of Edward A. Rumely, by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention by whatever name the said Edward A. Rumely is called or charged, before the District Court of the United States for the Southern District of New York, held in the Post Office Building in the City of New York, County of New York, State of New York, on January —, 1919, forthwith, to do and receive what shall then and there be considered concerning said Edward A. Rumely, and have you then and there this writ.

Witness the Honorable Learned Hand, Judge of the District Court of the United States of America for the Southern District of New York, this — day of January, 1919.

[SEAL.] ALEX. GILCHRIST, JR., *Clerk.*

Jan. 18/19.—Writ allowed.
JULIUS MAYER, *U. S. D. J.*

Pending hearing and determination of above by the Court relator may be enlarged at $500.

J. M., *D. J.*

29 [Endorsed:] M 3—399. District Court of the United States, Southern District of New York. Edward A. Rumely, Petitioner, against Thomas D. McCarthy, United States Marshal in and for the Southern District of New York and Samuel M. Hitchcock, United States Commissioner for the Southern District of New York, Respondents. Writ of Habeas Corpus. Powell, Wynne, Lowrie & Ruch, Attorneys for Petitioner, Office and Post Office Address: No. 165 Broadway, Borough of Manhattan, New York City.

30 In the District Court of the United States for the Southern District of New York.

EDWARD A. RUMELY, Petitioner,

against

THOMAS D. MCCARTHY, United States Marshal in and for the Southern District of New York, and Samuel M. Hitchcock, United States Commissioner for the Southern District of New York, Respondents.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Thomas D. McCarthy, being duly sworn, deposes and says: That he is the Marshal of the United States for the Southern District of New York and on his oath makes this return to the writ of habeas corpus allowed herein on January 18th, 1919.

Upon information and belief, on the 2nd day of December, 1918, there was duly filed, in the office of the Clerk of the Supreme Court of the District of Columbia, a certain indictment charging the petitioner herein with violation of the Trading with the Enemy Act at the District of Columbia, a copy of which indictment is annexed to the petition herein as "Exhibit B."

Upon information and belief, Hon. Samuel M. Hitchcock, United States Commissioner for the Southern District of New York, on the complaint of Harold Harper, Esq., Assistant United States Attorney, verified December 10th, 1918, a copy whereof is annexed to the petition herein as "Exhibit C," duly issued a warrant commanding the undersigned as United States Marshal to apprehend the

petitioner above named, and the said petitioner was duly ap-
31 prehended on December 10th, 1918.

Upon information and belief, such proceedings were had upon said complaint and warrant that on January 18th, 1919, the Commissioner duly held petitioner herein to await an order of removal, fixing bail in the sum of $10,000.

On January 18th, 1919, petitioner having failed to furnish bail, said United States Commissioner duly committed petitioner to the custody of the undersigned by an order endorsed upon the said warrant to apprehend as follows:

"In default of bail, defendant is hereby committed to the custody of the U. S. Marshal for the Southern District of New York, to be delivered by him to the City Prison of the City of New York, and there held to await order of removal.

Dated, New York, 1/18/19.

SAMUEL M. HITCHCOCK,
U. S. Commissioner, S. D. of N. Y."

The undersigned thereupon took the petition into custody.

At the time of the service of the writ of habeas corpus herein upon the undersigned, the undersigned duly held and had the body of the petitioner above named in his custody, pursuant to the order of commitment above set forth.

There was subjoined to said writ of habeas corpus herein an order of the United States District Court granted by the Hon. Julian M. Mayer, United States District Judge, as follows: "Pending hearing and determination of above by this Court, relator may be enlarged on $500.00 bail, J. M. M., D. J."

Thereupon and on January 18th, 1919, the petitioner duly furnished bail before Alexander Gilchrist, Jr., Esq., Clerk of the United States District Court for the Southern District of New York and was duly discharged from the custody of the undersigned upon such bail.

32 The reason that the undersigned does not produce the body of the petitioner upon the return day of said writ of habeas corpus is that he is enlarged upon said bail as aforesaid.

The sources of deponent's information and the grounds of his belief as to the matters above set forth upon information and belief, are the records of the Supreme Court of the District of Columbia and of the United States Commissioner for the Southern District of New York and the records of deponent's office.

Wherefore deponent prays that the writ of habeas corpus herein may be dismissed and that the said Edward A. Rumely, the petitioner herein, be remanded to the custody of the respondent McCarthy to be dealt with according to law.

THOMAS D. McCARTHY.

Sworn to before me this 24th day of January, 1919.

WM. J. FINEDY,
Notary Public, N. Y. C., #49.

33 [Endorsed:] U. S. District Court, Southern District of New York. Edward A. Rumely, Petitioner, versus Thomas D. McCarthy, United States Marshal, etc., and Samuel M. Hitchcock, etc., Respondents. Return to Writ of Habeas Corpus. Filed in open Court, January 25, 1919. Alex Gilchrist, Jr., Clerk. (Copy.)

34 United States District Court, Southern District of New York.

EDWARD A. RUMELY, Petitioner,

against

THOMAS D. McCARTHY, United States Marshal for the Southern District of New York.

In the Matter of the Petition of EDWARD A. RUMELY for a Writ of Habeas Corpus.

The above-named petitioner, Edward A. Rumely, in answer to the return of Thomas D. McCarthy, United States Marshal for the Southern District of New York, to the writ of habeas corpus herein, respectfully shows that the commitment returned by the said Thomas D. McCarthy, Marshal as aforesaid, as the cause of your petitioner's detention, is void and of no effect, and was issued in violation of your petitioner's rights, privileges and immunities under the Constitution and laws of the United States, for the reasons set forth in the petition for the issuance of the said writ, to which your petitioner here now refers with the same force and effect as though the said petition were incorporated herein and set forth at length.

Wherefore your petitioner prays for an order discharging him from the custody of the said Marshal.

Dated the 25th day of January, 1919.

POWELL, WYNNE, LOWRIE & RUCH,
Attorneys for Petitioner.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

35 Edward A. Rumely being duly sworn deposes and says that he has read the foregoing traverse and knows the contents thereof, and that the same is in all respects true.

EDWARD A. RUMELY.

Subscribed and sworn to before me Jany. 25, 1919.

SAMUEL M. HITCHCOCK,
U. S. Commissioner, Southern District of New York.

36 [Endorsed:] M 3—399. United States District Court, Southern District of New York. Edward A. Rumely, Petitioner, against Thomas D. McCarthy, United States Marshal for the Southern District of New York. Traverse to Return. Powell, Wynne, Lowrie & Ruch, Attorneys for Petitioner, Office and Post

Office Address, No. 165 Broadway, Borough of Manhattan, New York City. U. S. District Court, S. D. of N. Y. Filed Jan. 25, 1919. (Copy.)

37 The President of the United States of America to Samuel M. Hitchcock, United States Commissioner for the Southern District of New York, Greeting:

Whereas in a certain proceeding in the District Court of the United States for the Southern District of New York in which Edward A. Rumely is petitioner and Thomas D. McCarthy, United States Marshal for the Southern District of New York, and Samuel M. Hitchcock, United States Commissioner for the Southern District of New York, are respondents, a writ of habeas corpus has been issued and a writ of certiorari in aid thereof has been directed,

You, therefore, are hereby commanded that searching the records and proceedings in said cause you certify forthwith to the District Court of the United States for the Southern District of New York held in the Post Office Building, in the City of New York, County of New York, on the 25th day of January, 1919, forthwith under your seal, a full, true and complete transcript of the record and proceedings in the above entitled cause plainly and distinctly and in as full and ample a manner as the same now remain before you, together with this writ so that the said District Court of the United States for the Southern District of New York may be able thereon to proceed and to do what shall appear to it of right ought to be done. Herein fail not.

Witness, Honorable Learned Hand, Judge of the District Court of the United States of America for the Southern District of New York, this — day of January, 1919.

[SEAL.] ALEX. GILCHRIST, JR., *Clerk.*

Jan. 18/19.—Writ Allowed.
JULIUS MAYER, *U. S. D. J.*

38 [Endorsed:] M 3—399. United States District Court, Southern District of New York. Edward A. Rumely, Petitioner, Appellant, against Thomas C. McCarthy, United States Marshal in and for the Southern District of New York and Samuel M. Hitchcock, United States Commissioner for the Southern District of New York, Respondents. Writ of Certiorari. Powell, Wynne & Roberts, Attorneys for Petitioner, Office and Post Office Address: No. 165 Broadway, Borough of Manhattan, New York City. U. S. District Court, S. D. of N. Y., Jan. 24, 1919.

39 Before Hon. Samuel M. Hitchcock, U. S. Commissioner of the Southern District of New York.

UNITED STATES OF AMERICA

vs.

EDWARD A. RUMELY.

December 10th, 1918, took complaint and affidavit of Harold Harper, Assistant United States Attorney, charging that the defendant did, up to December 20th, 1917, at the District of Columbia, in violation of §§7 and 16 of the Act of October 6, 1917, fail to report to the Alien Property Custodian.

On the same date, issued warrant and certified copy of complaint to United States Marshal for the Southern District of New York which was returned on the same day with certificate that the defendant had been arrested on the same day.

December 10th, the defendant was brought before me and hearing had. Exemplified copy of indictment offered in evidence and Frederick J. Powell sworn as a witness on behalf of the United States and hearing adjourned until December 19th, and defendant paroled on consent of Mr. Harper, Assistant United States Attorney.

December 19th, 1918, hearing had, the defendant sworn and examined on his own behalf.

December 21st, 1918, hearing had and the following witnesses sworn and examined: Lawrence McGuire, Paul H. Fairchild and Marvin W. Wynne.

December 23rd, 1918, hearing had and following witnesses sworn and examined: Alfred J. Clayton, Harold Harper, Horace
40 O. Kilbourn.

January 4th, 1919, hearing had and following witnesses sworn and examined: John S. Henny, Edgar Rypinsky and argument had.

January 15th, briefs submitted on both sides.

January 18th, hearing had and defendant held for removal and commitment issued.

41 In the District Court of the United States for the Southern District of New York.

EDWARD A. RUMELY, Petitioner,

against

THOMAS D. MCCARTHY, United States Marshal in and for the Southern District of New York, and Samuel M. Hitchcock, United States Commissioner for the Southern District of New York, Respondents.

In pursuance of a Writ of Certiorari directed to me, I hereby certify that the foregoing is a full, true and complete transcript of

the record and proceedings in the above entitled cause and of the testimony taken before me herein and I file the same with the Clerk of the District Court of the United States for the Southern District of New York. The exhibits in the case are in the possession of counsel for the respective parties, pursuant to stipulation, and a copy of the complaint and final commitment is annexed to the petition herein and upon the record.

In Witness Whereof, I have hereunto set my hand and seal this 23rd day of January, 1919.

SAMUEL M. HITCHCOCK,
U. S. Commissioner, Southern District of New York.

42 UNITED STATES OF AMERICA,
Southern District of New York:

Before Samuel M. Hitchcock, Esq., U. S. Commissioner.

UNITED STATES

vs.

EDWARD A. RUMELY.

New York, December 10, 1918.

Stenographer's Minutes.

Index.

Testimony of—	Direct.	Cross.	Redirect.	Recross.
Frederick J. Powell.....	4			

Wm. J. Finerty, Stenographer United States Courts, U. S. Commissioner's Office, Post Office Building (down town), New York.
Notary Public New York County, Kings County, Bronx County.
Telephone, 1412 Cortlandt.

43 UNITED STATES OF AMERICA,
Southern District of New York:

Before Samuel M. Hitchcock, Esq., U. S. Commissioner.

UNITED STATES

vs.

EDWARD A. RUMELY.

New York, December 10, 1918.

Appearances:

Francis G. Caffey, Esq., United States Attorney, for the Government;
Harold Harper, Esq., Assistant U. S. Attorney, of Counsel.
Powell, Wynne & Roberts, Esqrs., Attorneys for the Defendant;
Frederick J. Powell, Esq., of Counsel.

Mr. Harper: If the Commissioner please, with regard to attendance, inasmuch as bail has been fixed in the sum of Thirty-five thousand dollars upon one of the indictments pending in this District, the Government will ask no additional bail to secure the attendance of Dr. Rumely before your Honor for the hearing
44 or for any adjournment that may be before your Honor.

If, however, at the conclusion of the hearing your Honor decides that the defendant is to be held for removal, in that case we will ask for substantial bail, but until such time, and pending the adjournment which your Honor may grant for a hearing in the matter, I am content.

The Commissioner: Just note on the record that the defendant is arraigned on this day, and admits his identity, and demands a hearing.

Pending the hearing, the Government consents, through Mr. Harper, Assistant United States Attorney for the Southern District of New York, that the defendant may be not required to give bond for his appearance, but may be paroled pending the hearing.

Mr. Harper: If your Honor please, I now offer in evidence an exemplified copy of the indictment, and ask that the same be marked.

The Commissioner: The same may be marked. (Exemplified copy of the indictment last above referred to and offered in evidence by Mr. Harper, marked Government's Exhibit 1 of this date.)

Mr. Harper: I now ask Mr. Powell if he concedes that the Edward A. Rumely, who is here present in court, and is now
45 sitting beside him, is the Edward A. Rumely that is mentioned in the indictment?

Mr. Powell: Before answering that, I desire to state that I now ask Mr. Harper as to what his position is going to be regarding the time within which this defendant will be permitted to prepare for this hearing?

Mr. Harper: I don't think that that question should be gone into at this time. The question is only one of identity; and I will withdraw my request, and ask Mr. Powell to take the stand. Will you be sworn?

Mr. Powell: Surely.

46 FREDERICK J. POWELL, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

By Mr. Harper:

Q. Where do you reside?

A. No. 17 Livingston Place, New York City.

Q. And do you know a man named Edward A. Rumely?

A. I do.

Q. Do you know the man who is standing beside you at the present time (indicating the defendant)?

A. I do.

Q. Is he Edward A. Rumely?

A. He is Edward A. Rumely.

Q. How long have you known him?

A. About four years.

Q. During those *eight* years have you resided in the City of New York?

A. I have.

Q. Has he resided in the City of New York during part of that time?

A. He has.

Q. Was he at any time connected with the New York Evening Mail?

A. He was.

Q. Was he connected with the S. S. McClure Newspaper
47 Corporation?

A. He was.

Q. Have you yourself seen stock in the S. S. McClure Corporation?

A. I have.

Q. Did you ever receive any stock of the S. S. McClure Corporation from Dr. Rumely, from the man you are describing as Dr. Rumely?

A. Received any stock, what do you mean?

Q. For any purpose, have you ever had any of that stock in your hand?

A. I had certificates of that stock in my possession, as I was the counsel which organized the corporation.

Q. Did you ever have any of those certificates in your possession while you were in conference with Dr. Rumely?

A. Yes.

Mr. Harper: That is all. Your witness.

Mr. Powell: I have no questions to ask myself.

Mr. Harper: If the Commissioner please, the Government rests.

The Commissioner: Now then, in regard——

Mr. Harper: This is the exemplified copy of the indictment which was offered in evidence.

The Commissioner: Yes.

48 Mr. Powell: Mr. Commissioner, I would like three weeks, but I am frank to say that I assume you will not give me that time, but the minimum I would like is two weeks, if the Commissioner please.

Now, if you care to hear me as to why we feel that the substantial interests of this defendant require our opposition to this attempted removal, I shall be very glad to give you our views, but I won't give them to you unless you care to hear me on the subject; but, as I have told Mr. Harper, we propose to oppose this removal; that we wish to make very full preparation for the purpose of opposing it, and for that purpose and for that reason, if your Honor please, I would like ample time.

The Commissioner: Is there any objection to two weeks?

Mr. Harper: Well, there is objection, sir. This is the ordinary case of removal from this District to the District of Columbia. The fact that there have been other indictments found in this District which may tend to show the defendant has been guilty of other crimes, is no reason why he should not be removed to the District of Columbia, which, in reality, is no more than this: that he should be required to plead to the indictment in the District of Colum-

49 bia.

There are several important matters attending upon his pleading in that District. One is the possible issuance of a commission in that District, which has been authorized in the cases pending in this district.

Now, no great object is achieved, sir, by having a full trial of the issues before your Honor.

Your Honor's decision, if it denies removal, is not conclusive upon the Government, and it is, therefore, of no great advantage to the defendant.

However that may be, there is no reason why, in this case, there should be allowed any large amount of time for the preparation of the hearing. The case has been pending a considerable time. The defendant was arrested upon one of the New York indictments as far back as July 8th.

Now, the Government has gone ahead and has submitted its case. It seems to me, sir, that an adjournment of this case until Friday afternoon, at this hour, would be sufficient, and the defendant should be required to proceed at that time, if they are going to offer testimony.

Mr. Powell: Will your Honor hear me a moment in reply

50 to Mr. Harper's remarks? There are a few things I would like to say, inasmuch as Mr. Harper has gone into the general question of our opposition to this removal case or proceeding, and what I will say will be germane, I assure you, and I ask your Honor to please have patience with me for a moment until I conclude.

The Commissioner: Yes.

Mr. Powell: The Government was investigating this case for over a year before the indictments were handed down in this jurisdiction last July. He was then indicted here, and released on Thirty-five thousand dollars bail. During that investigation by the Government, Dr. Rumely voluntarily appeared before the representatives of the Department of Justice, and the Military Intelligence Division of the Army. He answered freely all questions that were asked him, and turned over to them all the files which they requested, and he appeared voluntarily before the investigation conducted by Mr. Becker, in this State, and then what happened? He was brought over at five o'clock in the afternoon. He was kept waiting for two hours and then, as he was — to pick up his hat and go home, he was arrested, dragged off to the Tombs, and was denied, your Honor, the right even to communicate with his counsel or his wife.

51 He had to almost fight for that opportunity, and it was only due to Mr. Harper's intercession that he was given the right to send word to me and his wife up town.

The next day he was arraigned. Pending that investigation, the Government, without a warrant, without a shadow of right, intimidated and actually arrested some of the members of the Evening Mail staff, for the purpose of getting them to testify against Dr. Rumely.

A member of the Military Intelligence Division said to some of the witnesses before they went into the Grand Jury room:

"Now, you had better come across and tell the truth, or it will go hard with you."

Dr. Rumely's personal secretary was brought over and locked up in a police jail, and kept on a bench all night, with no warrant, no shadow of right, and the next morning hauled up before the Grand Jury.

That is the kind of procedure that we have been meeting!

In the preparation of his defense, we have had to encounter every conceivable obstacle. Banks and trust companies in this city have refused us a transcript of the defendant's own personal ac-

52 count, and have given it freely to the Government, notwithstanding the fact that we assured them that we were very glad that Mr. Harper should have a duplicate of any information that was given us.

A lot of books and papers in the Mail office; belonging to Dr. Rumely personally, were seized, and it was not until after a tremendous lot of red tape that we were able to get them, or get copies of them.

After Dr. Rumely had been arraigned in July, he employed New York counsel to represent him and to defend him, and since that time he has undergone the very heavy expense involved in preparing this case for trial here.

The enormous mass of books and papers of his, and many of them bank records and other documents which can be removed to another jurisdiction only with great difficulty, if at all.

Most of the witnesses live here. This is his home community.

This is where the campaign of publicity was launched against him, and now, your Honor, on the eve of trial here, the Government suddenly springs this Washington indictment, and tries to drag him off there. This game of battledore and shuttlecock between
53 --- Washington is easy for the Government with its unlimited resources, but it is a rank outrage for this defendant, who has to stand the load, and has nobody but himself and counsel to protect his rights.

I would like to ask the District Attorney why a New York Judge and jury is not good enough to try this New York defendant?

I would like to ask whether the Department of Justice is a Department of, Justice, or whether it is a Department of Persecution, and if the latter, whether he feels that the air of Washington is more conducive to its success? Why do they take him to Washington? If they are not satisfied with the indictments here, why does he not move to quash them? Why did they mislead him into preparing for his trial here, and after five months begin this judicial merry-go-round proceeding between here and Washington?

Dr. Rumely is an American citizen. He was born here and brought up here, and is entitled to his rights as an American citizen.

Now, it is for these reasons, may it please the Commissioner; that we are going to oppose this removal by every means in our power.

I believe this is a case where we are justified in raising every
54 technicality, and we are going to do it.

The Commissioner: Mr. Powell, this is a comparatively short indictment, it is only four pages in length, and it will not take you very long to examine it. Have you a copy of it?

Mr. Powell: I have, your Honor; I received a copy on Saturday.

The Commissioner: Then it won't take you long to prepare any objections you may have to the indictment, as to its sufficiency, etc.

Now, then, you have just said that your witnesses here, that they are New York people.

Mr: Powell: Most of them.

The Commissioner: So that you would have no great difficulty in having their attendance.

Mr. Powell: If the Commissioner please, we propose to examine the Grand Jury proceedings in Washington. We propose to see whether this indictment is right and proper in every respect. We propose to examine the proceedings down there, and as to the qualifications of the Grand Jurors. That can only be done in Washington. It takes up time. We are not after delay.

I do respectfully insist that this is the first opportunity we
55 have had to assert this man's right in court, and that we have time to do it. I do not see why three or four days should make much difference to the Government, and it makes a lot of difference to us.

The Commissioner: Of course, any investigation that may be made as to the indictment would be heard before the Court in the District of Columbia. I would have no jurisdiction over that matter.

Mr. Powell: As I understand decisions of the Supreme Court, we

have the right to present to your Honor the facts which may tend to show that the indictment in Washington is not prima facie valid.

I do not take it that we are bound simply by the certified copy of the indictment which the District Attorney now presents, and I believe upon a proper showing or hearing I can show to your Honor that you have that jurisdiction.

The Commissioner: I am inclined to disagree with you there, and I rather think the case of Beavers vs. Henkel, discusses that proposition very fully.

I do think you are entitled, under the decisions of the Supreme Court, to a full hearing here, and that you shall have.

56 It may be that the time that the District Attorney suggests for an adjournment is a little short, and it may be that the time for which you ask is a little longer than should be granted, so that therefore I will adjourn the case for a week, one week from today, and there is no reason why you should not go on with the hearing at that time. Your proceeding, whatever it may be, in Washington, can go on concurrently.

I am satisfied that any action that you may see fit to take in regard to the indictment, must be taken before the Court in which it is found, and not before me here.

Mr. Powell: Your Honor, as I have said, I think that I can show you that, under the decisions——

The Commissioner: Well, I know from the last memorandum handed down by Judge Augustus Hand, in this District—it was a memorandum only—an appeal from my ruling, holding the defendant for removal, and the validity of the indictment was attacked there, and there was some discussion before him——

Mr. Powell: Pardon me, sir. Mr. Harper, would you consent to this, in view of what has been said here, provided his Honor agrees to it, that is, to give us three days more? That will be ten days instead of one week.

57 Mr. Harper: I oppose, sir, any adjournment further than what your Honor has fixed, and in fixing it, I should like to say a word in reply to what has been said by counsel with regard to the alleged hardships to which the defendant has been subjected.

The defendant, it is true,——

Mr. Powell: Pardon me, Mr. Harper. Before you begin, may I say that my remarks were not addressed to Mr. Harper personally, who, so far as I have been able to ascertain, in his relations to me and to this case, has shown a disposition to be very fair, however zealous he may have been in forcing what he deems the rights of the Government; and I make this statement for the record in regard to Mr. Harper and his fairness, and on the assumption that he is not the author of the attempt to remove Dr. Rumely to Washington.

Mr. Harper: May it please the Commissioner, I have no doubt that Mr. Powell intends to be fair in the matter, but I should like to say that, in view of what has been said before your Honor, the defendant, it is true, was arrested late in the evening, but that he was arrested not one moment earlier or one moment later than that it had been determined by the responsible officers of the

58 Government that a crime had been committed, of which he was the author, and that he should be arrested.

The crime of the nature of which he is accused called for summary action upon the part of the officers of the Government. Waiving aside any question of responsibility elsewhere, I took upon myself the responsibility of arresting Dr. Rumely that night, and for him not to have been arrested that night I should have felt that I had not done my duty in a case of this sort unless he was arrested immediately that course had been determined upon.

Now, on the following days, as your Honor will remember, when Dr. Rumely was brought before your Honor, you fixed bail in the sum of Fifty thousand dollars. Dr. Rumely at that time protested that he was unable to furnish that amount of bail, and it was only at my instance, and, perhaps, against your Honor's best discretion in the matter, that the bail was reduced to Thirty-five thousand dollars.

The Commissioner: That is quite true.

Mr. Harper: Here today, sir, upon a proceeding of this sort, another crime found in the District of Columbia, the Government would have been fully justified in asking that additional and substantial bail be fixed.

59 Now, with regard to the evidence in this case and as to the preparation for trial, I do not think Mr. Powell will dispute the fact that every time he has made application to the United States Attorney's office for the examination of any specific portion of any document or documents, evidence that he had no right to receive under any theory of law, that was in the control of the United States or in the control of any of the investigating branches of the Government, that were working on this case, but what he was given opportunity to see it, and not only to see it, but to take copies of it.

He has been treated fairly and generously from the first, as far as this case is concerned.

The remark has been made that all technicalities will be raised that can be raised, and it is a good thing that we have that attitude of counsel revealed in advance, but still, there is no question of any technicality before your Honor now, but merely the matter of the exercise of your Honor's discretion as to what adjournment should be allowed. They have been heard on this case. Mr. Powell has been connected with the case for a long time, and other counsel with him have known about the case since the date of the arrest, at least since last July.

60 The evidence to be presented here is similar to the evidence which would be presented here in a case in this District; so that it is merely a matter of your Honor's discretion. Not a great amount of preparation is necessary for them to go ahead. I agree with your Honor that they are entitled to a full hearing, but I think that all the purposes of that hearing can be accomplished by an adjournment such as your Honor has indicated.

Mr. Powell: May I ask what your position is going to be regarding our right to take out a commission in the Washington proceeding?

Mr. Harper: Why, my present disposition is to consent that a commission be issued there conformable with the commissions that have been issued here in the Southern District of New York; but I do not see any necessity for it, if you are to make a motion or anything of that kind.

Mr. Powell: You are not giving me your assurance now that you will do so.

Mr. Harper: If I represented private client, I would do so. Well, as far as that can be done, I think I can give it to you, as I have charge of the proceedings in the District of Columbia, and I think that assurance can be given you.

61 Mr. Powell: If the Commissioner please, what conceivable difference does it make to the Government if this hearing goes over ten days instead of a week?

Mr. Harper: It makes this difference: that this case is an important case, it is a case of importance not only to the defendant but to the public, that justice should be worked out as speedily as possible; that the commissions must necessarily consume time, and the result is that the case is bound to be delayed.

Now, I do not believe that we should hear or do anything further.

Mr. Powell: Why wait five months to indict Dr. Rumely in Washington?

The Commissioner: Now, we are all away from anything before me. The matter that is before me is obvious. I have nothing to do with matters that occurred before this warrant was issued by me.

The matter before me is whether there is probable cause to believe that the offense as charged in the indictment was committed, and that the Court has jurisdiction of that offense. That is all there is before me. If the indictment on its face is a valid indictment,

62 it is prima facie evidence of the facts alleged in it. When the indictment is offered, and the identity of the defendant is admitted, the Government may well rest its case, unless there is evidence in rebuttal of what the Supreme Court holds to be prima facie evidence of the indictment.

Now, it is up to the defendant to put in evidence rebutting that prima facie evidence offered by the Government. If he fails to do that, then the removal must follow. If his rebuttal evidence is sufficient to overcome probable cause established by the indictment, then it is for the Government to put in additional proof in support of the indictment. In other words, the hearing before me is to be a full hearing.

Now, I think the adjournment that I have fixed, a week from today, is fair, and I shall ask you to be prepared to go on upon that day. If you cannot conclude on that day, you are entitled to a further adjournment.

(Whereupon the further hearing in the above entitled matter was adjourned to Tuesday, December 17, 1918, at 2 o'clock P. M.)

Next Government's Exhibit 2.

3 UNITED STATES OF AMERICA,
Southern District of New York:

Before Samuel M. Hitchcock, Esq., U. S. Commissioner.

UNITED STATES

vs.

EDWARD A. RUMELY.

New York, December 17-19, 1918.

Stenographer's Minutes.

Index.

Testimony of—	Direct.	Cross.	Redirect.	Recross.
Edward A. Rumely.....	29			

Wm. J. Finerty, Stenographer United States Courts, U. S. Commissioner's Office, Post Office Building (down town), New York. Notary Public New York County, Kings County, Bronx County. Telephone, 1412 Cortlandt.

64 UNITED STATES OF AMERICA,
Southern District of New York:

Before Samuel M. Hitchcock, Esq., U. S. Commissioner.

UNITED STATES

vs.

EDWARD A. RUMELY.

New York, December 17, 1918.

Hearing resumed pursuant to adjournment.

Appearances:

Francis G. Caffey, Esq., United States Attorney, for the Government;
Harold Harper, Esq., Assistant U. S. Attorney, of Counsel.
Powell, Wynne & Roberts, Esqrs., Attorneys for the Defendant;
Frederick J. Powell, Esq., of Counsel.

(Whereupon the hearing was further adjourned to Thursday, December 19th, 1918, at 2 o'clock P. M.)

65 UNITED STATES OF AMERICA,
Southern District of New York:

Before Samuel M. Hitchcock, Esq., U. S. Commissioner.

UNITED STATES

vs.

EDWARD A. RUMELY.

New York, December 19th, 1918.

Hearing resumed pursuant to adjournment.

Appearances:

Francis G. Caffey, Esq., United States Attorney, for the Government;
Harold Harper, Esq., Assistant U. S. Attorney, of Counsel.
Powell, Wynne & Roberts, Esqrs., Attorneys for the Defendant;
Frederick J. Powell, Esq., of Counsel.

Mr. Harper: Mr. Commissioner, at the last session the question was asked whether the Government would assent to the issuance of a commission in the District of Columbia similar to the commission
66 that has been issued in the indictments that are pending in this District, and I replied at that time that I believed it would.

I want to add this word, not so much as a qualification, but as an explanation: that, of course, that assurance which I gave was limited, as all such assurances necessarily are, to the reasonableness in point of time.

If the matter comes before the Supreme Court of the District of Columbia in a reasonable time, why, it is my belief that the Government will not object to the issuance of a commission to take testimony upon oral question and answer, such as has been granted by the Court here, but if proceedings are such that issue is delayed until some time in the distant future, of course, we must necessarily reserve our course of action in the exercise of our judgment at that time.

The Commissioner: Are you ready to go on, Mr. Powell?

Mr. Powell: Yes, sir. May I remain seated?

The Commissioner: Oh, surely.

Mr. Powell: May it please the Commissioner, since the last hearing, we have examined further the decisions of the Supreme Court, and I think we find that you were quite right in stating, as you did
67 at the last hearing, that on this proceeding objection as to the form of the indictment, technical defects, etc., could not be raised, and therefore we shall not raise any.

As I understand, the Government has closed its case, and I now

wish to move that the proceedings be dismissed on the ground that the indictment offered in evidence charges no crime or offense against the laws of the United States, and fails to charge any crime or offense cognizable by the Court of the United States in the District of Columbia, and that the evidence given by the Government upon this examination has failed to show any such offense against the laws of the United States, and has failed to show that any offense has been committed, cognizable by the Court of the United States in the District of Columbia; and that, therefore, your Honor is without jurisdiction in the premises.

The Commissioner: I will deny your motion.

Mr. Powell: And your Honor will give me an exception?

The Commissioner: Yes.

Mr. Powell: Now, Mr. Harper, I have considerable technical proof here in connection with which I think we can save a good deal of time if we can agree upon, if we can agree on its admission,

68 as I think we can.

I would like to offer in evidence a certified copy of the indictment No. 14202, 1918, United States District Court for the Southern District of New York, United States of America vs. Edward A. Rumely, and S. Walter Kaufmann, filed in the United States District Court on August 2nd, 1918.

I assume there is no objection.

Mr. Harper: I have no objection, sir, as to the form of proof, but I object to the admission of the document on the ground that it is irrelevant and immaterial.

The Commissioner: I do not know whether the objection is good or not. I have not examined the indictment, but I shall admit the document at present.

(Certified copy of the indictment last above referred to and offered in evidence by Mr. Powell, marked Defendant's Exhibit A.)

Mr. Powell: May it please the Commissioner, I also offer in evidence indictment No. 14,201.—1918—United States District Court for the Southern District of New York, United States of America vs. Edward A. Rumely, filed in the United States District Court on August 2, 1918.

69 Mr. Harper: I make the same objection, may it please the Commissioner.

The Commissioner: And the same ruling.

(Indictment last above referred to and offered in evidence by Mr. Powell, marked Defendant's Exhibit B.)

The Commissioner: However, I would like to have it noted upon the record that if, upon examination, I find that these indictments are not material, I shall permit the District Attorney to move to strike the same from the record.

Mr. Powell: Yes, sir. I also offer in evidence, may it please your Honor, certified copy of an order of United States District Court Judge Augustus N. Hand, dated New York, December 5, 1918, in

the case of United States of America vs. Edward A. Rumely, No. 14,201, and in the case of United States of America vs. S. Walter Kaufmann, and Edward A. Rumely, No. 14,202, providing for the issuance of a commission to examine certain witnesses therein named, in Switzerland.

Mr. Harper: I make the same objection, if your Honor please.

The Commissioner: The same ruling.

(Papers last above referred to and offered in evidence by Mr. Powell, marked Defendant's Exhibit C.)

70 Mr. Powell: I also offer in evidence copy of report to the Alien Property Custodian, purporting to be signed by Edward A. Rumely, and dated December 4, 1917.

Mr. Harper: Just an ordinary copy?

Mr. Powell: Yes; it is not certified.

Mr. Harper: You state that it is a copy of the report on file?

Mr. Powell: Yes, sir, to the best of my belief; and I offer it in evidence, subject, of course, to any correction; in case of comparison with the original, it should develope that it is not a true copy,——

Mr. Harper: I understand. No objection.

(Paper last above referred to and offered in evidence by Mr. Powell, marked Defendant's Exhibit D.)

Mr. Powell: I also offer in evidence document No. 840, House of Representatives, 65th Congress, 2nd Session, containing a report of the Alien Property Custodian, dated January 1, 1918.

I may say in explanation that, as I will show later, I am offering that report on the issue of whether the Alien Property Custodian did have his office in Washington, and no place else, as alleged in the Washington indictment. I shall specifically call attention to the portions of the report upon which we rely later.

71 Mr. Harper: I take it, sir, that this is the sort of thing of which your Honor can take judicial notice without specific offer. However, if counsel, without raising that point in order that it may become part of the record, will agree that any similar publication of the Alien Property Custodian may be offered by the Government without formal proof, I shall raise no objection as to this.

Mr. Powell: Certainly, Mr. Harper.

(Paper last above referred to and offered in evidence by Mr. Powell, marked Defendant's Exhibit E.)

Mr. Powell: May it please the Commissioner, I next offer in evidence Bulletin of Information, issued by the Alien Property Custodian, dated June 8, 1918.

Mr. Harper: No objection.

(Bulletin of Information last above referred to and offered in evidence by Mr. Powell, marked Defendant's Exhibit F.)

Mr. Powell: Dr. Rumely, will you take the stand, please?

72 EDWARD A. RUMELY, the Defendant, called as a witness in his own behalf, being first duly sworn, testified as follows:

Direct examination.

By Mr. Powell:

The Commissioner: Mr. Harper, I understand that it is the Government's contention that the Supreme Court of the District of Columbia has exclusive jurisdiction of the offense charged in the indictment. Am I right?

Mr. Harper: I do not know that I can make the concession quite as broad as that.

The Commissioner: Well, I ask you the question in view of the decisions of the Supreme Court of the United States, that a defendant shall not be removed from the district of his domicile to another district for trial where the offense is triable in the jurisdiction of his domicile.

Mr. Harper: Yes, sir. Well, if your Honor will permit, I would like to refrain from defining the Government's attitude until the proof is in.

The Commissioner: Very well.

Q. Dr. Rumely, where were you born?
A. LaPorte, Indiana.
Q. Are you a citizen of this country?
A. I am.

Q. Where do you now reside?
73 A. New York City, No. 324 West 103rd street.
Q. How long have you resided there?

A. Approximately three and a half years, approximately three years there and three and a half years in New York.

Q. You have resided continuously for about three and a half years in New York City?
A. I have.
Q. Were you arrested on a complaint and warrant on July 8th, 1918?
A. I was.
Q. Were you arraigned before United States Commissioner Hitchcock, the United States Commissioner for the Southern District of New York?
A. On July 9th.
Q. The following day?
A. On July 9th.
Q. What happened?
A. I was held on bond, on bail, of $35,000.
Q. Did you demand a hearing?
A. I did.
Q. Did you subsequently waive hearing?
A. I subsequently waived hearing.
Q. Was your bail deposited in court?
A. It was, and is still on deposit there.

Q. How much did you say?
74 A. Thirty-five thousand dollars.
Q. When was that deposited?
A. On July 9th.
Q. 1918?
A. 1918.
Q. Were you indicted by the Grand Jury in the United States District——

Mr. Harper: Just a minute. Pardon me. I thought you had finished.

Q. By the Grand Jury of the United States District Court for the Southern District of New York on August 2nd, 1918?

Mr. Harper: If your Honor please, I object to the question on the ground it is incompetent, irrelevant and immaterial, and not the best evidence; the best evidence is the indictment, and the indictment has now been admitted, and I see no reason for going into the matter orally. If the indictment is incompetent, why, the testimony is incompetent.
The Commissioner: I think the objection is well taken.
Mr. Powell: All right. I will withdraw the question.

Q. I show you Defendant's Exhibits Nos. A and B, heretofore admitted in evidence, and purporting to be an indictment
75 against you in the one case, and against you and S. Walter Kaufmann, in the other, found in the District Court of the United States for the Southern District of New York. Are you the Edward A. Rumely referred to in this indictment?
A. I am.
Q. Were you arraigned in the United States District Court for the Southern District of New York on the proceeding on these two indictments?
A. I was, on August 2nd.
Q. 1918?
A. 1918.
Q. Did you plead?
A. I pleaded not guilty.
Q. What provision was made with respect to bail?
A. The bail was continued in $35,000.
Q. Is it still on deposit?
A. It is still on deposit.
Q. Have you been tried on either of those two indictments?
A. I have not.
Q. At the time of your arraignment on these indictments on February 2nd, 1918, what provision was made by the Court with respect to the time of trial?
A. The Court ruled that the District Attorney could move
76 for trial on four days' notice.
Q. Have you received any notice from the District Attorney to date, moving this case for trial?
A. I have not.

Q. What steps did you take after your arrest on July 8, 1918, relative to the preparation of your defense?

Mr. Harper: May it please the Commissioner, I object to that as incompetent, irrelevant and immaterial.

The Commissioner: Oh, I think it may be material.

Mr. Powell: I will tie that up later, your Honor, I think.

Mr. Harper: The preparation he makes for his defense?

The Commissioner: I think so.

Mr. Harper: The case not before your Honor?

The Commissioner: I don't know whether that would be. If I may have an opportunity to look over this indictment. Are those indictments to the same effect as the indictment on which the removal is sought?

Mr. Powell: They do not charge the identical crime, but they arise out of the same transaction, and, briefly, the situation is this: In New York Dr. Rumely was indicted for making a false report to the Alien Property Custodian.

77 The Commissioner: That is not the case here, and I should not care to have him testify in regard to any expense or expenses that he has been put to for the defense on that indictment, and if that is the indictment offered in evidence, charging a different offense from this, I shall refuse to admit it and sustain the objection of the District Attorney. If both indictments are for different offenses, or a different phase of the same offense, that is, the commission of perjury in connection with rendering a report, or rendering a false report, in other words, I should refuse to admit them as evidence.

Mr. Powell: I would like to show your Honor later on, if I may, that, notwithstanding the fact that the crimes charged in the New York indictment and the Washington indictment, are not identical, nevertheless there is a right in the defendant to oppose this removal and further, there is a certain jurisdiction, there is a certain discretion as to whether, even under those circumstances, the Federal Court in this jurisdiction should surrender custody of this defendant to the Federal Court in the District of Columbia; and I shall refer to some decisions in support of that, if your Honor will permit me.

78 The Commissioner: If it is shown before me that the District Court of the District of Columbia has exclusive jurisdiction over the trial of this case, and the presumptive force of the indictment is not overcome by affirmative proof, I should be obliged to hold the defendant for removal to Washington. That is the first phase of the situation.

The next phase is, that the defendant may testify to the expense that he made or incurred in the way of employing counsel or taking evidence or taking his books or papers, or whatever he may have to produce upon the trial in the shape of evidence, a distance away from his home for trial. That would be pertinent testimony under the case of Hyde vs. Shine.

Mr. Powell: Yes, sir.

The Commissioner: But this matter of indictments charging other offenses in this District cannot be material in this issue before me.

Mr. Powell: Does your Honor wish to hear me on that point now, or shall I postpone my argument until later? What I thought I would do would be to offer all the evidence that we wish to introduce now, and then take up the argument later; but if your Honor
79 wishes me to address myself to that question now, I will do so.

Mr. Harper: How much of this proof is there, Mr. Powell?

Mr. Powell: Not very much. I was simply going to ask the Doctor—well, I was not going into detail—I was simply going to show that he engaged counsel to defend the New York indictments in this jurisdiction; that they have been continually engaged in those from that time on, and then rest. I was not going into the details as to expenses, etc.

The Commissioner: I cannot see that that is material here, as yet.

Mr. Powell: Well, then, your Honor sustains the objection of the District Attorney?

The Commissioner: I do.

Mr. Powell: And I desire to have my exception noted to your Honor's ruling.

The Commissioner: Yes, your exception may be noted.

Q. Have you at any time since the 6th of October, 1917, to date, been within the District of Columbia?

A. I have.

Q. State the approximate dates and duration of your stays there during that period?

Mr. Harper: Objected to as incompetent, irrelevant and
80 immaterial.

The Commissioner: Well, I will over-ule your objection at the present time.

Mr. Harper: Unless those dates were subsequent to the finding of the indictment, and even then I cannot see the materiality.

The Commissioner: You may answer.

A. I was in Washington about October 11th for two days.

Q. Washington, D. C.?

A. Washington, D. C., and again in November, I think, about the 16th or the 17th.

Q. For how long?

A. Two days, approximately two days, and about the 9th of December for a day or two; I think once in the first months of 1918, although I am not able to fix the date of that, and about May 23rd for two days.

Q. How long were you in Washington on that occasion, that you describe as being in the early months of 1918?

A. A day or two.

Q. Were you in Washington on December 20th, 1917?

A. I was not.

Q. With the exception of your absence in Washington, D. C., as you have just described, have you been in New York City, or

within the jurisdiction of this Court, from October 6th to
81 date continuously, and, if not, state when you were not?

A. Almost continuously. I went West to Indiana, Illinois and Missouri on several short trips.

Q. In the aggregate, including the Washington trips, approximately how many days were you absent from the jurisdiction of this Court, including December 20th, to date?

A. Probably not over three weeks, and surely not more than thirty days in all.

Q. I should have said from October 6th to date?

A. October 6th to date.

Q. Yes.

A. Yes, sir.

Q. Your answer referred to the period beginning October 6th?

A. Yes, sir.

Q. Doctor, do you know something about the S. S. McClure Newspaper Corporation?

A. I certainly do.

Q. By whose direction was that corporation organized?

A. On my direction.

Q. When?

A. In the early part of May, 1915.

Q. And you have been connected with it from that time to the present time?

A. Continuously from that time to this date.

82 Q. What was your specific connection with that corporation?

A. Stockholder.

Q. And——

A. Officer and director.

Q. Now, explain in detail what positions that you held in respect to that corporation?

A. Managing Vice-president.

Q. When?

A. And I think director, on June 9th, 1915.

Q. And a member of the Finance Committee?

A. And member of the Finance Committee.

Q. On the same date?

A. On the same date.

Q. How long did you hold those three positions?

A. Continually ever since.

Q. Until when?

A. Until I was elected President, in April 1918.

Q. Well, did you not remain a director and member of the Finance Committee after your election as President, on April, in April 1918?

A. Yes.

Q. Until when?

A. Until the present time.

Q. So that from June 9th, 1915, you were continually
83 a director and member of the Finance Committee?

A. Yes, sir.
Q. From June 9th, 1915, to April 30, 1918, you were Vice-president?
A. I was.
Q. And from April 30th, 1918, you were President?
A. President.
Q. Did you hold another office in that corporation?
A. I held for a period of time, the office of Secretary.
Q. Do you remember when you were elected?
A. In June, 1915.
Q. Are you sure of that?
A. Not without reference to the records.
Q. You could not state?
A. I could not state positively.
Q. I think you are in error on that date?
A. I think I was, but I am not sure.
Q. So far as you know, has there ever been a corporation organized under the laws of the State of New York, or elsewhere, known as the S. S. McClure Newspaper Corporation?
A. Other than that in which I am interested?
Q. Yes, other than that in which you were interested.
A. No, sir, I know of no other corporation by that name other than the one in which I was myself interested.
84 Q. And to which you have referred in your previous testimony?
A. And to which I have referred in my previous testimony.
Q. Dr. Rumely, I hand you herewith Defendant's Exhibit D, a copy of a report of the Alien Property Custodian, dated December 4th, 1917. Did you sign the original report of which this purports to be a copy (showing)?
A. I did.
Q. So far as you now see, is Defendant's Exhibit D a correct copy of the original report which you signed?

Mr. Harper: Objected to, if your Honor please.
Mr. Powell: I will withdraw the question.

Q. Where did you sign the original report of which Defendant's Exhibit D is a copy?
A. In the office of Powell, Wynne, Lowrie & Ruch, No. 165 Broadway.
Q. In this City?
A. In New York City.
Q. When?
A. On December 4th.
Q. 1917?
A. 1917.
Q. Did you acknowledge the original report before a Notary?
85 A. I did?
Q. Before whom?
A. Mr. John M. Lowrie.

Q. Where did you acknowledge that?
A. In the office of Mr. Powell.
Q. Where?
A. At No. 165 Broadway.
Q. In this City?
A. New York City.
Q. When?
A. On December 4th, 1917.
Q. What did you do with the original of the report after you had signed and acknowledged it?
A. I mailed it by dropping it in the chute of the building.
Q. United States Mail chute?
A. United States Mail chute.
Q. At what building?
A. No. 165 Broadway.
Q. This City?
A. New York City.
Q. When?
A. December 4th, 1917.
Q. To whom was the report addressed, to whom was the envelope containing the report, addressed?
86 A. The Alien Property Custodian.
Q. Where?
A. A. Mitchell Palmer, Washington, D. C.

Mr. Powell: Now, Mr. Harper, will you admit that the original report of which Defendant's Exhibit — is a copy, was received by the Alien Property Custodian, at his office in Washington, through the mail? I did not think that you wanted me to go to the bother of subpœnaing somebody from down there. That is subject, always, of course, to correction, in case this should not be a correct copy. However, I believe it to be correct.

Mr. Harper: Subject to correction, I make the admission you request.

Mr. Powell: I may add that I have not compared this copy with the original, but it is made from a copy which is in Dr. Rumely's possession, and I assume it is correct.

Now, Mr. Harper, I would like to know, in order to save time, if you will admit that the indictment, that the written declaration, certificate and statement to the Alien Property Custodian referred to, in each of the three counts of Defendant's Exhibit B, indictment No. 14201—1918——

The Commissioner: Mr. Powell, that is no longer an ex-
87 hibit in this case.

Mr. Powell: I did not know that you had——

The Commissioner: Oh, yes, in the former examination I believe I questioned you regarding the indictment, as to whether it was identical with the present indictment.

Mr. Powell: I beg your Honor's pardon. I did not appreciate that. Well, may I have these two indictments marked for identification then, so that my questions will be intelligible?

The Commissioner: Oh, yes.

Mr. Powell: Well, shall we call them Defendant's Exhibits, shall we call Indictment No. 14,201—1918—Defendant's Exhibit B, for identification, and Indictment No. 14,202—1918—Defendant's Exhibit A, for identification.

The Commissioner: Yes.

Mr. Powell: Now, Mr. Harper, I would like to know whether you will admit that the written declaration, certificate and statement, to the Alien Property Custodian, referred to in each count of the Defendant's Exhibit B for identification, is the report to the Alien Property Custodian of which Defendant's Exhibit D is a copy?

Mr. Harper: Subject to correction, I will admit the fact,
88 but I object to the admission of the testimony upon the ground that it is incompetent, irrelevant and immaterial in this proceeding.

Mr. Powell: Will you also admit that the capital stock of the S. S. McClure Newspaper Corporation, referred to in the second count of Defendant's Exhibit B for identification, is the same as the capital stock referred to in the first count of the indictment in the Supreme Court of the District of Columbia, Criminal No. 34,521, United States vs. Edward A. Rumely, which is the basis of the present removal proceeding?

Mr. Harper: Well, if it will suffice for your purpose, I would admit that the S. S. McClure Newspaper Corporation is the same corporation that is referred to in the report in the indictment filed in the District of Columbia, and in the indictment which you have offered in evidence here, and which has been excluded and marked for identification. Is that what you wish?

Mr. Powell: Not quite, because I would like to prove that the capital stock referred to in the Washington indictment is the capital stock referred to in the New York indictments.

Mr. Harper: Well, I do not—you are asking this question
89 now merely with respect to the indictments?

Mr. Powell: That is all, nothing else. In other words, I want to show——

Mr. Harper: The capital stock is referred to in various ways. Sometimes the class is given, and sometimes the number of shares, but I cannot, without studying the matter somewhat, make that admission at this time.

Mr. Powell: Well, then, do you wish me to prove it? I simply wish to prove that the Washington indictment which charges that Dr. Rumely held shares of capital stock of the S. S. McClure Newspaper Corporation, on behalf of the German Imperial Government, is referring to the same shares of stock which it is alleged in the New York indictment he held on behalf of the German Imperial Government.

Mr. Harper: I cannot make that concession. I will concede that the corporation is the same.

Mr. Powell: Will you admit that the indebtedness to the German Imperial Government, referred to in one of the New York indictments, is the same as the indebtedness to the German Imperial Government, referred to in the Washington indictment?

Mr. Harper: That is the same amount, is it not?

90 Mr. Powell: No. I do not wish to—in this situation I do not want to tie up—the Washington indictment is No. 14—well, I will reframe the question so as not to tie up on the question of amounts.

Will you admit that the indebtedness of $1,301,700, to the German Imperial Government, referred to in the third count of Defendant's Exhibit B for identification, is part of the $1,451,700 indebtedness to the German Imperial Government, referred to in the second count of the Washington indictment?

Mr. Harper: I will concede the fact, subject to—well, I will concede the fact, but I object to the admissibility of the evidence as incompetent, irrelevant and immaterial in this proceeding.

Mr. Powell: Will you further admit that the report to the Alien Property Custodian, and the written declaration, certificate and statement to the Alien Property Custodian, referred to in each count of Defendant's Exhibit A for identification, is the report to the Alien Property Custodian introduced in evidence as Defendant's Exhibit D?

Mr. Harper: I have not those counts so well in mind, but, upon your statement that the indictment reasonably describes the

91 document that you have offered, why, I will, subject to correction, concede that it is the same; but I again object to the admissibility of the testimony as being incompetent, irrelevant and immaterial in this proceeding.

The Commissioner: You do not care to have me rule upon that objection now, do you?

Mr. Harper: I think, sir, if you will reserve your ruling, Mr. Commissioner.

Mr. Powell: I have a number more. Now, will you admit that the indebtedness of $1,431,700 to the German Imperial Government, referred to in the second count of Defendant's Exhibit A, is part of the indebtedness of $1,451,700, referred to in the second count of the Washington indictment?

Mr. Harper: Same admission, with the same objection.

Mr. Powell: Will the Government admit that the Alien Property Custodian had an office at No. 111 Broadway, Borough of Manhattan, City of New York, from—well, before I ask that question, your Honor, had we not better have a ruling in these six or seven?

The Commissioner: Well, it seems to me that, as the questions were asked of Mr. Harper, and his admissions made with the

92 reservation as to each one of them, I would have to sustain the objection.

Mr. Powell: And I take an exception.

The Commissioner: Your exception may be noted.

Mr. Powell: Will the Government admit that the same Property Custodian had an office for the transaction of business at No. 111 Broadway, Borough of Manhattan, New York City, from February 1, 1918, to May 1, 1918?

Mr. Harper: No, sir.

Mr. Powell: Will the Government admit that the Alien Property Custodian had an office for the transaction of business at No. 110 West 42nd street, Borough of Manhattan, City of New York, from May 1, 1918, to date?

Mr. Harper: No, sir.

Mr. Powell: I shall ask later on, your Honor, for an adjournment of the hearing so that we may be permitted to prove that fact. I thought probably Mr. Harper would assent to that and I did not want to subpœna anybody from the Alien Property Custodian's office. That is my information, however, as to what the fact is.

Mr. Harper, will you admit on behalf of the Government, that the indebtedness to the German Imperial Government, re-
93 ferred to in the two New York indictments, and in the Washington indictment which we have been referring to, was an indebtedness of the defendant Edward A. Rumely, evidenced by notes, promissory notes, executed by Edward A. Rumely, payable to the order of Walter Lyon—but before answering that, please let me state this: as I said to you over the telephone, I am not endeavoring to show or go into on this hearing the merits of the case on the two issues of whether the German Government did, in fact, own this stock, or whether this indebtedness was, in fact, owed to the German Imperial Government, and my questions are not directed to either of these issues.

Mr. Harper: I assume Dr. Rumely is still on the stand.

Mr. Powell: I take it Dr. Rumely cannot testify as to what the indebtedness, referred to in the indictment, is. I take it that the best man to give that evidence is the Government official who had charge of the Grand Jury proceeding, and, therefore, can tell what indebtedness the Grand Jury referred to in their indictment.

Mr. Harper: You are asking for admissions now.

Mr. Powell: Yes, sir.

94 Mr. Harper: Will you kindly repeat your specific request?

Mr. Powell: Will the Government admit that the indebtedness to the German Imperial Government—I will state it in this way: will the Government admit that the Washington indictment and the two New York indictments, and heretofore referred to in these proceedings, in referring to the indebtedness to the German Imperial Government, refers to an indebtedness of the defendant Edward A. Rumely, which was evidenced or purported to be evidenced by promissory notes executed by the defendant Edward A. Rumely, expressed on their face to be payable to one Walter Lyon?

Mr. Harper: Well, I say no. Well, I wish to point out that the matter is a little bit too complicated to admit of concession. I prefer not to make any concession in that regard.

Mr. Powell: I understand that is the fact, and I thought you would not compel me to put you on the stand to prove it.

Mr. Harper: I am perfectly willing to go on the stand.

Mr. Powell: Well, will you take the stand, please?

95 Mr. Harper: Well, I will, after you are through with this witness.

Mr. Powell: You want me to finish with him first?

Mr. Harper: If you don't mind.

Q. Dr. Rumely, what was the principal business of the S. S. McClure Newspaper Corporation?

A. To hold the stock of the Mail & Express Company, and finance the operations of that concern.

Q. Did the S. S. McClure Newspaper Corporation acquire all of the capital stock of the Mail & Express Company?

A. No, it did not, no.

Q. It did not?

A. No, not originally.

Q. Shortly after it was organized, in May 1915, did the S. S. McClure Newspaper Corporation acquire shares of the capital stock of the Mail & Express Company?

A. Thirty-eight hundred shares.

Q. Out of a total of how many outstanding?

A. Out of a total of 4000 shares.

Q. Did it thereafter acquire two hundred shares?

A. The two hundred shares were acquired, and I think—I am not sure whether they were—I think they were acquired finally by the McClure Company.

Q. In any event, from about the 1st of June 1915, the S. S. McClure Newspaper Corporation held 3800 shares of the capi-
96 tal stock of the Mail & Express Company, out of a total issue of 4000 shares outstanding; is that correct?

A. That is correct.

Q. What was the principal business of the Mail & Express Company?

A. The principal business of the Mail & Express Company was publishing the Evening Mail.

Q. Did the Mail & Express Company own the Evening Mail?

A. It also owned the Evening Mail.

Q. What, in general, was the method by which the S. S. McClure Newspaper Corporation financed the Mail & Express Company?

A. The S. S. McClure Newspaper Corporation financed the Mail & Express Company by the loan of its own moneys.

Q. To the——

A. To the Mail & Express Company, by discounting notes, sometimes the notes of the Mail & Express Company, endorsed by the McClure Company.

Q. Did the S. S. McClure Corporation receive, in many instances, from the Mail & Express Company, the latter's notes in exchange for the cash advanced, the cash advances made from time to time by the S. S. McClure Company, to the Mail & Express Company?

A. It did.

Q. Referring now to the period beginning November 7th,
97 1917, and ending, and continuing through November of that year, describe briefly the financial, the principal financial transactions between the Mail & Express Company and the S. S. McClure Corporation, beginning on November 7th?

A. These are the receipts of the S. S. McClure Newspaper Corporation: on November 7th, it received from the Mail & Express Company, $500.00, payment of bills receivable.

Q. That is in payment——

A. Of a note of the Mail & Express Company, running to S. S. McClure Newspaper Corporation. On November 8th, 1918—1917—it received on account from the Mail & Express Company, $51.67.

Q. Was that in payment of advancements, or disbursements theretofore made by the S. S. McClure Newspaper Corporation for account of the Mail & Express Company?

A. It was in repayment of moneys advanced, it was to apply on account, that originated from moneys advanced to the Mail & Express Company.

Q. By the S. S. McClure Corporation?

A. By the S. S. McClure Corporation.

Q. Yes.

A. On the 10th it received on account $87.09.

Q. Representing a similar transaction?

A. On November——

98 Q. Is that correct, representing a similar transaction?

A. Yes, representing a similar transaction. November 15th, again it received on account—representing a similar transaction—$27.08; and on the 15th it received from the Mail & Express Company, on bills receivable, $600.00; on the 16th, $45.00 on account; on the 24th—November 24th—$60.00 on account; November 27th, $25.83, on account; November 30th, $65.00 on account.

Mr. Harper: Pardon me just a moment. It is quite evident that all the witness is doing is reading this statement, and he can cover it with a general question, it seems to me. I have no objection to your incorporating this statement into the record; and although I do not object to it as to the form of proof I think I shall take an objection to the relevancy and materiality of this testimony.

Mr. Powell: Are you objecting to the form of proof, or to its relevancy, because I take it that, as to the form of proof, it will save a lot of time if we avoid having to bring over books and bookkeepers of those two corporations, and as to that I am perfectly willing to offer it, subject to correction by you.

Mr. Harper: I think if you will offer this, and I will state my objection, that will probably save time. If you will ask the
99 witness a general question, for example, with regard to this page containing receipts on it (indicating).

Mr. Powell: I would prefer having him give the explanation of the items as he goes along, and you can make your blanket objection to the whole thing, if you will, because the statement as it now is, as it now stands, is not very intelligible.

Mr. Harper: Well, suppose you ask the question.

Mr. Powell: Well, he is right in the middle of it, and, if you don't mind, let him finish the sheet, otherwise the record will be in terrible shape.

Mr. Harper: He did not read the first two items, did he?

Mr. Powell: Those are before November 7th. The question is addressed to the period beginning November 7th, 1917.

The Witness: On November 7th the McClure Newspaper Corporation received on a note discounted at the National Park Bank, issued by the Mail & Express Company, and endorsed by the S. S. McClure Newspaper Corporation, $10,926.66.

Q. In other words, on that day, the McClure Corporation secured moneys for the Mail & Express Company by taking the note of the Mail & Express Company, endorsing it, and discounting it

100 at the National Park Bank; is that correct?

A. That is correct. Now, here follows a series of entries for similar transactions (indicating).

Q. Through the discounting of notes?

A. Through the discounting of notes of the Mail & Express Company, endorsed by the S. S. McClure Newspaper Corporation, and discounted at the National Park Bank.

Q. Read the amounts.

A.—

November 8th	$7,486.25
November 13th	8,955.00
November 20th	11,940.00
November 23rd	4,974.17
November 27th	12,935.00
November 30th	4,974.17

Here follows another series. That is all of those transactions. Now here follows another series:

On November 7th the McClure Newspaper Corporation received from the Mail & Express Company, $507.00, that being partial payment on Liberty Bonds purchased by the McClure Newspaper Corporation, on behalf of the Mail & Express Company, for its employees, that is, for the Mail & Express Company, for the employees of the Mail & Express Company:

On the 12th, it received	$458.75
On the 14th, it received	382.25

101

On the 16th it received	128.00
On the 19th it received	367.00
On the 21st it received	361.00
On the 26th it received	357.00
On the 28th it received	348.00
On the 23rd it received—that does not seem to have any date or—well,	100.00

Q. Those last items are transactions similar to the item of $507.00 on November 7th?

A. They are.

Q. Now, referring to the same period, that is, beginning November 7th, 1917, and continuing through November, state the disbursements received by the——

A. Made by the——

Q. Disbursements made by the S. S. McClure Newspaper Corporation, for account of the Mail & Express Company, and also for certain other purposes?

A. On November 7th, the McClure Newspaper Corporation paid to the Mail & Express Company, $11,000.00; on the 7th it paid to Edward A. Rumely, salary, for October, $250; it paid to G. H. Larke, I think for salary, $385.00; November 8th, it paid to the Mail & Express Company, $7500; on November 14th it paid to the Revenue Collector, $33.04; on the 15th it paid to Edward A. Rumely, $250.00; to George H. Larke, $410.00; to the Mail & Express on November 20th it paid $12,000; on November 21st, to the
102 Mail & Express Company, $5000; on November 27th, $13,000; on November 30th, $5000.

Now, it paid on Liberty Bond account, on November 13th, $400; on November 22nd, $2189; on November 22nd, $600; on November 27th, $100; on the 28th, $50——

Mr. Harper: May it please the Commissioner, I should like to note an objection on the ground of incompetency, irrelevancy and immateriality to this. I did not interpose my objection previously in order not to interrupt the succession of figures and tables, on the stenographer's notes.

Mr. Powell: I ask your Honor to reserve decision on that until I get through with the rest of this, so that I can look up the law on the matter.

Mr. Harper: It seems, sir, if your Honor is in doubt as to whether this testimony is admissible or not——

Mr. Powell: I mean it would make a much more orderly presentation if I can take up the law altogther on the subject rather than to break in now. That is all of that line of evidence.

Mr. Harper: I was not suggesting that you argue, or insist upon a ruling at this time, but merely suggesting that you indicate the relevancy of it.

103 Mr. Powell: You will have the pleasure of that in a very few minutes.

The Commissioner: I will reserve decision for a moment.

Q. In order to shorten the time, I hand you herewith a sheet headed, "Receipts, 1917" in the upper half of the page, and "Disbursements" on the lower half of the page, and I ask you whether this statement correctly sets forth the receipts of the S. S. McClure Newspaper Corporation during the month of December 1917, from the Mail & Express Company, on account, as set forth in the statement, and from the National Park Bank on notes of the Mail & Express Company, endorsed by the S. S. McClure Newspaper Corporation and discounted by the latter corporation at the National Park Bank?

Mr. Harper: Before the question is answered, let me ask: does this purport to be taken from the books of the Mail & Express Company?

Mr. Powell: The books of the S. S. McClure Newspaper Corporation, I think.

Mr. Harper: For the purpose of this hearing only, sir, I make no objection as to the form of proof, but I do object to the admission of the evidence upon the ground that it is incompetent, irrelevant and immaterial.

Mr. Powell: As I understand it, following the former pro-
104 cedure, Dr. Rumely will answer the question and the Commissioner will rule on it later.

Mr. Harper: I am not objecting to the blanket form of the question, sir.

The Commissioner: I understand. The point is, whether this testimony is material at all. It does not seem to me that it is. You ask me to reserve my decision on those questions until you have finished your line of questioning, and then you will argue the materiality of it?

Mr. Powell: Yes, sir. Then you object to the last question?

Mr. Harper: I object on the ground that it is immaterial, and irrelevant.

Mr. Powell: And decision is reserved?

The Commissioner: Yes, sir.

Q. Now, does the second half——

A. I have not answered the first half yet.

Q. I know you have not. It is objected to, but you will answer it later on when we get the Commissioner's ruling. Does the second half of this sheet headed, "Disbursements" correctly set forth for the month of December, 1917, the disbursements made by the S. S. McClure Newspaper Corporation, for the Mail & Express Company, where so stated on the statement?

105 A. It does.

Mr. Harper: I make the same objection.

The Commissioner: The same ruling.

Mr. Harper: May I have a copy of the statement?

Mr. Powell: Yes, sir.

Q. From the time of its organization, about June 1, 1915, were you the Executive head of the S. S. McClure Newspaper Corporation?

A. I was.

Mr. Harper: Objected to as calling for a conclusion, sir, and I move to strike out the answer on the same ground.

The Commissioner: Objection sustained, and motion granted.

Mr. Powell: I take an exception.

Q. I hand you herewith a document entitled, "S. S. McClure Newspaper Corporation, by-laws, as amended June 1, 1915." Were those the by-laws of the S. S. McClure Newspaper Corporation adopted on that date?

A. They were.

Q. I call your attention to Section 8 of Article 4 of these by-laws, headed, "The Vice-President" and setting forth the powers and duties of the Vice-President. Has that section of the by-laws been amended from June 1, 1915, to date?

106 A. It has not.

Q. Has Section 7 of Article 4, relative to the powers of the President, been amended from June 1, 1915, to date?

A. I think not.

Mr. Powell: I offer this in evidence.

Mr. Harper: No objection.

(By-laws last above referred to and offered in evidence by Mr. Powell, marked Defendant's Exhibit G.)

Q. Did the S. S. McClure Newspaper Corporation at any time secure from the President of the United States, or his representative, a license under the Trading-With-the-Enemy-Act, to do any of the matters or things after October 6th, 1917, or after November 5th, 1917, to which you have referred in your testimony?

A. It did not.

Q. Did you receive from the President of the United States, or any of his representatives, a license to do any of the things after October 6th, 1917, or after November 5th, 1917, to which you have referred in your testimony?

A. I did not.

Q. Did anyone receive such a license on behalf of the S. S. McClure Newspaper Corporation?

A. Not to my knowledge.

Q. Did the German Imperial Government receive any such license, so far as you know?

107 A. I had no communication with them.

Q. No, that is not an answer.

A. No, not to my knowledge.

Q. I call your attention to the two affidavits—to the two indictments—Defendant's Exhibit A and Defendant's Exhibit B, respectively, and the Washington indictment, which is the basis of this removal proceeding, and specifically to the indebtedness to the German Imperial Government, referred to in each of these three indictments; in the indictment, Defendant's Exhibit B, for identification, that indebtedness being stated as $1,301,700, and in Defendant's Exhibit A for identification, $1,431,700, and in the Washington indictment as $1,451,700; did you on or about June 1st, 1915, execute a promissory note, expressed on its face to be payable to one Walter Lyon, for the sum of, the principal sum of $750,000?

A. I did.

Mr. Harper: Just a moment, sir.

The Witness (continuing): On or about that date.

Mr. Harper: The question was answered before I had a chance to interpose an objection. I do not object to the last part of the ques-

tion, that is, so much as it is a question, but I do object to the various matters that are referred to in that question; I object to them upon the ground that they are irrelevant, incompetent and immaterial in this proceeding. To the question: "Did you execute a promissory note on June 1st, 1915?" I have no objection.

Mr. Powell: All right, Mr. Harper. We will withdraw it all, and just repeat the latter part of the question.

Q. You may answer now.

A. I did, on or about June 1st.

Q. Did you on or about January 4th, 1917, execute another note for the principal sum of $551,700, expressed on its face to be payable to one Walter Lyon?

A. I did.

Q. Did you deliver both of those notes when executed to Walter Lyon?

A. Yes, sir.

Q. To someone on his behalf?

A. I did.

Q. Did you on February 20th, 1917, deliver another note—execute and deliver another note—for the principal sum of $100,000, expressed on its face to be payable to Walter Lyon?

A. On or about that date, yes.

Q. And you delivered that note so executed to Walter Lyon?

A. I did, or to his representative.

Q. Did you thereafter, shortly thereafter, execute another note for $50,000?

A. Yes, sir.

Q. Expressed on its face to be payable to Walter Lyon?

A. Yes, sir.

Q. And you delivered that note to him when so executed, to Walter Lyon, or someone in his behalf?

A. I did.

Q. Were you at any time after June 1st, 1915, indebted to anyone in the sum of $750,000, or any larger amount, except the indebtedness evidenced by these notes to which you refer?

A. I was indebted to no one for that amount or more, other than the indebtedness represented by these instruments.

Q. I call your attention to the fact that these notes—did these notes provide that they were secured by the pledge of capital stock of the S. S. McClure Newspaper Corporation as collateral?

A. They did.

Mr. Harper: Just one moment. That is objected to, on the ground that the notes themselves are the best evidence.

The Commissioner: Objection sustained.

Mr. Powell: Very well. Let us have the notes. Here are the notes (producing notes). If the Commissioner please, I very much prefer that I do not have to leave these notes, because they are very or will become very important on the trial.

Mr. Harper: Are these the originals?

The Commissioner: You may offer them in evidence, if they are material, and retain them in your possession.
Mr. Powell: All right, sir. Thank you.

Q. I hand you herewith a form of note dated June 1st, 1915, for the principal sum of $750,000; a note dated January 4th, 1917, for the principal sum of $551,700; a note dated February 20th, 1917, for the principal sum of $100,000; and a note dated April 19th, 1917, in the principal sum of $50,000; and I ask you whether those four notes are the notes you have just referred to in your testimony (showing witness)?
A. I cannot tell whether these are all the originals; they are the notes or copies of the notes.
Q. Look at them and you can tell.
A. Yes.
Q. Look at them all and be sure.
A. Yes.
Q. Your answer is yes.
A. Yes.

Mr. Powell: I offer these notes in evidence.

111 The Witness (continuing): I am not quite sure as to this one (indicating).

Mr. Powell: I offer these notes in evidence.
Mr. Harper: No objection.
The Commissioner: Mark them.

(Notes last above referred to and offered in evidence by Mr. Powell, marked Defendant's Exhibits H, I, J, and K).

(Whereupon the further hearing in the above entitled matter was adjourned to Saturday, December 21, 1918, at 10 o'clock A. M.)

Next Government's Exhibit 2.
Next Defendant's Exhibit L.

112 UNITED STATES OF AMERICA,
Southern District of New York:

Before Samuel M. Hitchcock, Esq., U. S. Commissioner.

UNITED STATES
vs.
EDWARD A. RUMELY.

New York, December 21, 1918.

Stenographer's Minutes.

Index.

Testimony of—	Direct.	Cross.	Redirect.	Recross.
Lawrence McGuire	69	88	98	
Paul H. Fairchild.....	105			
Marvin W. Wynne.....	111			

Wm. J. Finerty, Stenographer United States Courts, U. S. Commissioner's Office, Post Office Building (down town), New York.
Notary Public New York County, Kings County, Bronx County.
Telephone, 1412 Cortlandt.

113 UNITED STATES OF AMERICA,
Southern District of New York:

Before Samuel M. Hitchcock, Esq., U. S. Commissioner.

UNITED STATES
vs.
EDWARD A. RUMELY.

New York, December 21, 1918.

Hearing resumed pursuant to adjournment.

Appearances:

Francis G. Caffey, Esq., United States Attorney, for the Government;
Harold Harper, Esq., Assistant U. S. Attorney, of Counsel.
Powell, Wynne & Roberts, Esqrs., Attorneys for the Defendant;
Frederick J. Powell, Esq., of Counsel.

LAWRENCE MCGUIRE, a witness called on behalf of the Defendant, being first duly sworn, testified as follows:

Direct examination.

By Mr. Powell:

The Witness: If the Commissioner please, may I make a statement for the record?

114 The Commissioner: Yes.

The Witness: I am a director of the Real Estate Bureau of the Alien Property Custodian.

I have been unable to communicate with the Alien Property Custodian, or counsel representing the Alien Property Custodian, and any testimony that I may give here or be required to give in any way connected with the administration of the Alien Property Custodian, will be given under protest; and I believe I should have the right and privilege of communicating with the Law Division of the Alien Property Custodian before being required to give any testimony.

Mr. Powell: Mr. McGuire——

The Commissioner: Now, one moment. Mr. McGuire, I would make you acquainted with Mr. Harper, the Assistant United States Attorney, in charge of this matter.

Mr. Harper: I am Mr. Caffey's representative, Mr. McGuire.

The Commissioner: And Mr. Harper will interpose any objection to any questions that may be propounded to you.

Mr. Powell: May I say, Mr. McGuire, if you have had no opportunity to confer with the Alien Property Custodian, I do not
115 wish to examine you until you have had that opportunity. If you had told me that before you had taken the stand, I would have been glad to have told you that.

The Witness: You knew I had not been given a subpœna until five o'clock last night.

Mr. Powell: All I know is that you are the president of the Realty Company, and you were the renting agent of No. 111 Broadway. However, if you desire the privilege about which you have just spoken, I would be very glad to have you avail yourself of it and will postpone your examination.

The Witness: Without knowing anything about, or the nature of this proceeding at all, I only make that statement for the record. I am sworn here as an individual, not as President of the United States Realty & Improvement Company, nor as the Directory of the Real Estate Bureau of the Alien Property Custodian.

Mr. Powell: That is true.

The Witness: I know nothing about the proceeding or its nature. If I know the nature of the proceeding, I would be willing to testify.

Mr. Powell: My information is that the Alien Property Custodian had an office at No. 111 Broadway, from February 1, 1918, to May 1, 1918. If that is correct, I will desire to prove that fact by
116 you, but I do not wish to ask you to testify if you desire to confer with the Alien Property Custodian first. If you desire, we will postpone your examination.

The Witness: Well, that clarifies the situation then. Is this a proceeding to obtain information with regard to the negotiations of the Alien Property Custodian with the United States Realty & Improvement Company, and whether or not any branch or department of the Alien Property Custodian occupied any part of this building?

Mr. Powell: That is all.

The Witness: Then I am perfectly willing to go on with this examination, if that is the nature of the proceeding. I am content to go on with it.

The Commissioner: Now, just one moment. Mr. McGuire has asked what is the nature of this proceeding. Now, I do not think that has been answered. The answer as given to Mr. McGuire by Mr. Powell I do not think has been made quite clear to the witness. The witness asked as to the nature of this proceeding. The nature of the proceeding is for the removal of the defendant Rumley to Washington, D. C., where he has been indicted for failure to file with the Alien Property Custodian a report of his holdings
117 of alien property, alien-owned property. Now, that is the nature of the proceeding before me.

The Witness: That, Mr. Commissioner, puts an entirely different light on the situation, and I think that Mr. Harper here will agree with me that I should be informed fully and have an opportunity to confer with a representative of the Alien Property Custodian before testifying.

Mr. Harper: I have no objection to that.

The Witness: As explained to me by counsel, it merely seemed to be necessary to produce a record of certain tenancies.

Mr. Powell: All I wish to do is to get from you a record of any tenancy by the Alien Property Custodian at No. 111 Broadway, Mr. McGuire, and nothing else. However, if you feel, for any reason, that you do not wish to give that testimony, without consulting with the Alien Property Custodian, I am not going to insist on your doing it, until you have had that opportunity.

The Witness: I am content to accept the advice and direction of the United States Attorney.

Mr. Harper: Well, I have no objection to your testifying, sir, to whatever may be within your knowledge. I do not think
118 any conference upon the subject is necessary, provided the questions are competent. I should like to have the record read to me. I was not here when you begun.

Mr. Powell: Well, the reason we started before you came back, Mr. Harper, was, Mr. McGuire wanted to make a statement for the record. That was all that transpired.

Has Mr. McGuire been sworn, Mr. Commissioner?

The Commissioner: Yes.

Q. Where do you reside, Mr. McGuire?

A. No. 15 West 55th Street.

Q. What is your position, please, with reference to the premises known as No. 111 Broadway, Borough of Manhattan, City of New York?

A. The premises No. 111 Broadway, Borough of Manhattan, City of New York, are owned by the United States Realty & Improvement Company, a corporation of which I am the President.

Q. How long have you been the President of that corporation?

A. Since June 13th, 1917.

Q. How long has that company owned those premises, how long has that corporation owned those premises?

A. About twelve years.

Q. Has the official of the United States Government, known
119 as the Alien Property Custodian, at any time rented any portion of those premises?

Mr. Harper: Objected to as calling for a conclusion.

The Commissioner: Objection sustained.

Mr. Powell: I take an exception.

Q. Have you, Mr. McGuire, any leases or sub-leases, or other agreements, providing for any renting of any portion of those premises by an official of the Government known as the Alien Property Custodian?

A. I have not.

Q. Are there any written leases or written agreements in existence, as far as you know, representing the renting of any portion of those premises by the Alien Property Custodian?

Mr. Harper: Objected to as calling for a conclusion, as being improper in form, and calling for facts not shown to be within the knowledge of the witness.

The Commissioner: What is the question?

(Question read.

Mr. Harper: I further object, may it please the Commissioner, upon the ground that it is calling for the contents of documents. It is vitally important to the inquiry before your Honor.

Mr. Powell: I first want to find out whether there are any
120 such, and if I establish the fact there are not any in existence, then I will ask him the fact regarding any oral agreement or agreements

Mr. Harper: I do not see whether if he had them here it would make much difference, but I do object to any question which characterizes them in the absence of their being present here.

Mr. Powell: The District Attorney's objection originally was to my question, his objection to my first line of questions was that I was calling for the contents of written instruments. That objection being sustained, I think I am entitled to show that there is no such written instrument in existence, and never was. He cannot make both of those objections at the same time, it seems to me.

The Commissioner: You may answer.

Q. (Question read.)

A. I don't know.

Q. Have you ever seen any?

A. No.

Q. That question, Mr. McGuire, you will observe not only covers formal leases, but written agreements, any kind.

A. I understood the question.

Q. Has the Alien Property Custodian at any time rented any part of those premises?

121 A. No, sir.

Mr. Harper: If the Commissioner please, I object to the question as calling for a conclusion, and move to strike out the answer on the same ground.

The Commissioner: The objection is sustained, and motion granted.

Mr. Powell: I take an exception.

Q. Has the Alien Property Custodian at any time occupied any part of those premises?

Mr. Harper: Objected to as calling for a conclusion.

The Commissioner: He may answer that.

Mr. Harper: If the Commissioner please, may he not say who was there? That is the very point in issue, sir, and that is why I object to the question. I think the witness should be limited, he not being an official character, and, obviously, not competent to testify as to who is the Alien Property Custodian, and whether the Alien Property Custodian was occupying the premises. He can state what individuals were there and what they were doing.

Mr. Powell: He does not know what they were doing.

The Witness: I may say that I am more or less familiar.

122 The Commissioner: I think under the circumstances and conditions, I shall reverse myself, and sustain the objection.

Mr. Powell: I take an exception to your Honor's ruling.

Q. (Question read.) Has anyone stated to you that they represented the Alien Property Custodian at any time, and who occupied any portion of those premises?

Mr. Harper: Objected to as incompetent, irrelevant and immaterial, and calling for hearsay testimony.

The Commissioner: Objection sustained.

Mr. Powell: Exception.

Q. Has anyone at any time occupied those premises connected, if you know, with the office of the Alien Property Custodian?

Mr. Harper: Objected to as calling for a conclusion.

Mr. Powell: I respectfully submit, if the Commissioner please, that that question is entirely proper.

Mr. Harper: I submit, sir,——

Mr. Powell: Why, if the Commissioner please, the District Attorney's objections are utterly inconsistent with themselves.

The Commissioner: The qualification, if you know, I think makes the question proper.

123 Mr. Harper: May I not state, sir, that these objections are not put in or interposed for the purpose of retarding the movement of the proceeding, but simply so that we shall not have a record of statement of conclusions which should not be put on

record, because the witness is not familiar with the facts upon which the conclusion rests.

The Commissioner: He was asked if he knows of his own knowledge whether the premises were so occupied. If he does, he may answer.

Mr. Harper: Why, sir, if I may press my objection a bit further, why is not the witness asked just who the individuals were.

Mr. Powell: You mean in the entire building for the period of twelve years?

The Commissioner: Oh, you may answer the question.

The Witness: I shall have to ask the counsel to be more specific in referring to premises. You have not indicated whether you mean No. 111 or No. 115 Broadway. There are two buildings, one the Realty and one the Trinity, and there are a good many tenants of those two buildings, you know.

Q. I refer to either one or both, either to 111 Broadway or to 115 Broadway, Borough of Manhattan, City of New York.

A. Well, there are a great many people in the various lo-
124 cations in this building, directly and indirectly representing the Alien Property Custodian, including myself, where I maintain the New York Office of the Real Estate Bureau, and I do not know what premises you mean. There are a great many people in those two buildings who have directly or indirectly represented the Alien Property Custodian during the war, and are still representing him, so that if you will indicate who you mean or which you mean, I will try and answer your question.

Q. As to these premises you speak about, or the portion of the premises that were occupied by the persons to whom you have just referred, did the directory in the building or the lettering on the doors outside of any of those premises, at any time refer to the Alien Property Custodian?

Mr. Harper: Objected to as incompetent, irrelevant and immaterial, and calling for hearsay.

Mr. Powell: Now, if the Commissioner please, that is absolutely an untenable objection, for the Alien Property Custodian maintained an office at either one of those premises, and outside of the door, for example, it said, "Alien Property Custodian, New York Branch Office"; and of course, that is relevant evidence.

The Commissioner: I don't think it is. The objection is
125 sustained.

Mr. Powell: I take an exception to your Honor's ruling.

The Commissioner: Mr. Powell, I take it that the Alien Property Custodian might have places throughout the United States for the transaction of particular lines of business connected with him, with his department, but, at the same time, that does not constitute the office of the Alien Property Custodian, although that might be the sign upon the door.

Mr. Powell: Well, granting that. Assume, however, that it is established that, as shown by the report of the Alien Property Custodian which is already in evidence, the Alien Property Custodian

hires quarters in this city, and designates it in his report as the New York Branch Office of the Alien Property Custodian, letters his doors to the suite of his offices, "New York Alien Property Custodian," or, rather, "Alien Property Custodian, New York Branch," I respectfully submit, sir, that, if we establish evidence to that effect, the burden is then upon the Government to show that that office was not what it purported to be, namely, a branch office of the Alien Property Custodian, but that it was an office with limited functions for particular purposes.

126 The Commissioner: Well, practically, the railroad companies have their offices, and everybody knows where their offices are located, but, at the same time, you will find that their office is scattered over the country, and likewise the business to be transacted in those offices would be of an entirely local nature, while the main office of the company would be the office where the principal business is conducted.

Mr. Powell: Well, then, do I understand from your Honor's ruling that we cannot introduce any evidence to show that the Alien Property Custodian maintained any office in the City of New York, unless at the same time we show the particular kind of business transacted at that office, and that the burden is upon us to establish that?

The Commissioner: I think that is the case.

Mr. Powell: Very well, sir. I take an exception to your Honor's ruling.

The Commissioner: Your exception may be noted.

Q. Mr. McGuire, state, if you know, the general line of activities conducted by these various people whom you have described as being connected with the Alien Property Custodian at the premises in question, and, of course, as confined to your own personal knowledge?

127 A. I conducted the New York Office of the Real Estate Department in the building No. 115 Broadway, and later No. 111 Broadway; various tenants throughout the building served on directorates of boards representing the Alien Property Custodian and, for a short period, comparatively short period, in some one part of the building there was conducted the New York office of one of the Bureaus of the Alien Property Custodian, or one of the departments of the Alien Property Custodian.

Q. Was that No. 113 or 115?

A. No; No. 115. There is no No. 113.

Q. Well, No. 111?

A. Yes. If my memory serves me, it was No. 111.

Q. Can you give me the date of that?

A. The date of that occupancy?

Q. Yes, of the bureau or department to which you have last referred?

A. No, I cannot do that. That was a sub-lease, which we did not enter.

Q. Can you give me the approximate time, to the best of your recollection?

A. I can by referring to some papers, if that is permissible.

Q. You have a perfect right to refresh your recollection in that way, if you wish?

128 A. Well, the best I can say is that it was some time prior to May 1, 1918, I should say from about October.

Q. And what is your best recollection as to the period?

A. I should say from about October, 1917, to about May, 1918.

Q. Have you finished your answer now in regard to any of the others?

A. I have, if I understood your question.

Q. Yes. My question was directed to the line of activities of the various people connected with the Alien Property Custodian, and you spoke about yourself, about this department, and the fact that various tenants had acted as directors, and I ask you now whether there is anything else you remember?

A. That is complete, in accordance with my memory at the minute.

Q. Have you any letters from the Alien Property Custodian with reference to occupying or renting any portion of the premises in question?

A. Not from the Alien Property Custodian, no.

Q. Have you letters from anyone purporting to be written in his behalf?

A. Yes, I have letters that are more or less of a confidential nature to me as director of the real estate bureau, having no bearing, however, on any tenancy in the building.

129 Q. You say you have none bearing on the occupation of any portion of those premises?

A. Not from the Alien Property Custodian; no letters from the Alien Property Custodian.

Q. Have you any letters from any of the tenants in any portion of those premises, to you, with reference to sub-letting or occupation of the Alien Property Custodian, or by the Alien Property Custodian?

Mr. Harper: This question is limited to letters that he has in his possession?

Mr. Powell: Yes, sir, or under his control.

Mr. Harper: Is it limited to those letters which he has stated to be of a confidential nature?

Mr. Powell: No, it is not.

Mr. Harper: Then I think I must object to it as calling for the contents of a written instrument, if the Commissioner please.

The Commissioner: The objection is sustained.

Mr. Powell: Exception. Your Honor, are we not entitled to show by written evidence of any nature whatsoever——

The Commissioner: Mr. Powell, your questions calls for the contents of a written instrument.

Mr. Powell: Then, sir, I will reframe the question your Honor. I have to characterize it in some way.

130 Q. Have you any letters in your possession or under your control, Mr. McGuire, referring to the renting or occupation

by the Alien Property Custodian, or anyone in his behalf, of any portion of the premises in question?

A. Let me see if I understand your question: have I any letters from the Alien Property Custodian, or anyone in his behalf. What do you mean by "his behalf"? Associated with him, or connected with the Department?

Q. Yes?

A. No, I have——

Q. That was not my question. You have already answered in the negative before. I ask you now whether you have any letters from anyone relative to the renting or occupation by the Alien Property Custodian, or anyone in his behalf, of any portion of those premises?

Mr. Harper: Objected to as incompetent, irrelevant and immaterial, and not binding upon the United States. The witness has already stated that he has no letters from the Alien Property Custodian, or of his representatives, on the subject of the renting of these premises.

The Commissioner: Objection sustained.

Mr. Powell: Exception.

Q. Have you any letters from any of the tenants of any por-
131 tion of those premises relative to sub-letting or assigning by them of any portion of their premises to the Alien Property Custodian, or anyone in his behalf?

Mr. Harper: Objected to upon the same ground.

The Commissioner: Objection sustained.

Mr. Powell: Exception. Of course, your Honor will give me an exception to all of these objections interposed by the Assistant United States Attorney, and therefore, I assume, it will be unnecessary for me to repeat that I take an exception each time.

The Commissioner: Yes. I fail to see, Mr. Powell, how you expect to bind the United States by a letter written by anyone on behalf of the Alien Property Custodian, or by any tenant, assuming that the letters proposed to sub-let to the Alien Property Custodian.

Mr. Powell: That was followed by the occupation of the Alien Property Custodian, under, we will say, an assignment or a sub-lease.

The Commissioner: Well, I won't pass upon that question until we come to it.

Mr. Powell: I am now trying to find out the circumstances under which that occupation was had, whether it was by sub-lease or assignment of a lease.

The Commissioner: I do not think your method of arriving at it is proper.

132 Mr. Powell: Very well, sir. That is all, Mr. McGuire.

Cross-examination.

By Mr. Harper:

Q. Do you know Mr. A. Mitchell Palmer?
A. I do.
Q. Has he at any time had an office in your building?

Mr. Powell: Objected to as calling for a conclusion, the same objection which the District Attorney raised to my question, if the Commissioner please.

Q. Has he at any time himself occupied an office in your building

Mr. Powell: Do you mean personally?
Mr. Harper: Yes.
Mr. Powell: In his personal capacity?

Q. I mean A. Mitchell Palmer, has he ever been in your building

The Commissioner: He may answer the question.
Mr. Powell: Exception.

A. I cannot say. Will you fix the period?
Q. Well, from October 6th, 1917, to December 20th, 1917?
A. I believe Mr. Palmer was in the office of the Bureau during that period.
Q. Did he himself have any desk there?
A. That I do not know. I was never in that Bureau, I was never in that office.

133 Q. Do you know whether or not any office was ever assigned to him there?

A. Yes, we subrented one to him, at least we gave our consent that one be subrented to him.
Q. What date was that?
A. I think it was around October, 1917.
Q. Did Mr. Palmer personally occupy that office?
A. Why, Mr. Palmer's office is in Washington, his own office but he came around to the Bureaus from time to time.

Mr. Powell: I move to strike out that portion of the answer, the latter portion of the answer.
The Commissioner: Strike it out.

Q. What I wanted to know was whether there was any room that Mr. Palmer personally occupied for any continuous period during the time from October 6th, 1917, to December 20th, 1918?

Mr. Powell: Objected to as calling for a conclusion. If the witness knows he should state the fact.
The Commissioner: He may answer.

A. I do not know; I do not believe so, but I do not know.

Mr. Powell: I move to strike that last part of the answer out that is, I do not believe so.

The Commissioner: Strike it out.

Q. You stated, Mr. McGuire, that there was a Bureau which occupied premises from October 1917 to May, 1918; what Bureau was that, please?

A. I believe it was some branch of the Bureau of Trusts presided over by Mr. Kilbourne.

Q. Do you know Mr. Kilbourne's first name?

A. No. He is referred to here in a letter only as Mr. Kilbourne.

Q. How do you fix the date of the beginning of that occupancy?

A. From the date of a letter addressed by me to Mr. Palmer, in May, 1918.

Q. That is how you fix the date, by some reference in that letter?

A. Yes, sir, by reference in that letter.

Q. Now, what were your duties in connection with this Real Estate Department of which you were in charge?

A. What were my duties?

Q. Yes.

A. General Appraiser, management, leasing, assignment of trusts of all real property taken in by the Alien Property Custodian.

Q. Did you occupy any office on the premises No. 111 Broadway for that purpose?

135 A. Why, my office as President of the Company is at No. 111 Broadway, and I did not put the Alien Custodian to the expense of creating a Real Estate Bureau there; I shared my office and carried on my dual capacity in my own office, acted in my dual capacity in my own office.

Q. When did you commence to act in that capacity?

A. I don't know the date, but it was shortly after the passage of the Trading With the Enemy Act.

Q. Did you in your office receive any written statements of property owned or claimed to be owned by Alien Enemies?

Mr. Powell: Objected to.

The Commissioner: Objection sustained.

Q. Did you maintain in your office any file of reports, or written statements submitted by persons of property owned or claimed to be owned by alien enemies?

Mr. Powell: Objected to. It cannot make any difference whatever, whether Mr. McGuire maintained in his office any file of reports or written statements.

The Commissioner: Had you any other business in your office other than that connected with the real estate?

The Witness: Of the Alien Property Custodian?

136 The Commissioner: Yes.

The Witness: Yes, I was appointed director by the Alien Property Custodian, and on several boards.

The Commissioner: What was the nature of that?

The Witness: Why, one was the Astoria Homestead Company.

The Commissioner: In connection with boards of other corporations owning property or carrying on business?

The Witness: Yes, sir.

The Commissioner: And that was the limit of your services to the Alien Property Custodian?

The Witness: Oh, no; that was a separate service entirely. I thought I made it clear that I was a director of the Real Estate Bureau, having direct charge of all real estate taken over by the Alien Property Custodian under the Act of Congress known as the Act, as the Trading with the Enemy Act, and my official designation was Chief of the Real Estate Division of the Alien Property Custodian.

The Commissioner: Had you any of the general business of the Alien Property Custodian in your hands?

The Witness: Yes, sir, I had.

The Commissioner: General business—well, I am not talk-
137 ing about these specific matters. What you had in your hands, as I understand you, was specific details of that business principally relating to real estate?

The Witness: Yes, sir—not only business connected with me as director for the corporation, but I have in my files records and data in connection with all property, real property, taken over by the Alien Property Custodian.

The Commissioner: Now, you had no general functions beyond those?

The Witness: Yes, I had the general function of directing and managing the Real Estate Bureau.

The Commissioner: That is exactly what I mean. You had no general business as a representative of the Alien Property Custodian, except those which were specifically given you?

The Witness: Those that came within the Real Estate Bureau in the general organization.

The Commissioner: And nothing beyond that?

The Witness: And nothing beyond that, excepting my representing the Alien Property Custodian, and the various boards of directors.

Q. Did you make a report of your work from time to time?

A. Yes, sir, naturally.

Q. How did you address those reports?

138 A. Well, they were addressed to different individuals and different bureaus in the Alien Property Custodian's Department, sometimes Mr. Palmer direct and sometimes Mr. Davis, sometimes Mr. Stone, and sometimes Mr. Weed, of the Mortgage Department.

Q. How did you address your reports to Mr. Palmer?

A. If I recall rightly, A. Mitchell Palmer, Alien Property Custodian, Washington, D. C.

Q. Did you have in your office any file of written reports of enemy-owned property?

A. Yes, enemy-owned real estate.

Q. Did you receive——

The Commissioner: Mr. McGuire, what do you mean by reports?

The Witness: Why, if your Honor please, when the Alien Property Custodian took over a piece of real estate, the Real Estate Bureau or Division was immediately advised and a report of that property was sent on to me, and I determined then whether to have the property appraised or what action we should take in connection with it, and as to who would have the management of it, and so forth, regular routine.

The Commissioner: Then I understand you to mean by reports, reports made to you by your investigators or others in connection with the ownership of the property, is that it?

139 The Witness: They were not made to me, your Honor, but were made directly to the Assistant Chief of the Division in Washington, and he would relay them on to me. In other words, he would cull them out and relay them on to me; he had certain powers to act himself. We established a Bureau for the Division, you know.

The Commissioner: I understand, but you received no reports directly?

The Witness: Why, my Bureau did, my Washington Office did. I would not have them come directly to New York; they were sent on to me in Washington. If a piece of property was taken over by the Alien Property Custodian, as long as it was real estate, the report, it was sent in directly to my office in Washington, and copies were sent to New York. Where there was any doubt as to what procedure was to be taken, they were either sent to me here in New York or they waited until I got to Washington, which I did once or twice a week.

Mr. Powell: Those reports, as I understand it, related to properties that had been seized by the Alien Property Custodian?

The Witness: Seized or about to be seized. We never said
140 "seized" over there. We said, "taken over."

Mr. Powell: Yes, that sounds a little better. And those reports were reports to whom?

The Witness: They were reports to me. It was surprising to us, how many citizens gave us information in regard to that without any action whatever by the Department at all. I got a great many letters myself from alien-owned property, about alien-owned property, and concerning which we had no suspicion at all.

By Mr. Harper:

Q. Did you receive any reports outside of reports you have described?

A. That is pretty general, is it not?

Q. Well, yes. Did you receive at your office any of the written statements required to be filed by individuals holding property under Section 7 of the Trading with the Enemy Act?

Mr. Powell: Objected to as improper. This witness cannot possibly state what was required by that section. The United States

fectly material; but to my mind it is hardly discussable that the Alien Property Custodian should be prohibited from having agencies scattered throughout the country in connection with the duties of his office.

Mr. Powell: We have here a criminal case the burden in connection with which is upon the Government to establish before your Honor probable cause that a crime was committed in the District of Columbia, and the Washington indictment says this: that under the Trading With the Enemy Act it became the duty of anyone having control of any property on behalf of an alien enemy to report the fact to the official of the Government of the United States of America known as the Alien Property Custodian.

Then the indictment alleges that, at the time of the commission of the offense hereinafter set forth the said Alien Property Custodian did have his office for the transaction of business as such Alien Property Custodian at and within the District of Columbia, in the United States of America, and had no other place.

146 Now, when we come to a detailed discussion of the law I want to emphasize before your Honor the reason for that in relation to the cases.

The Commissioner: Mr. Powell, I am going to give you an opportunity to present briefs on this subject. I think we will get along more quickly, however, if you will take such testimony as you have to offer. I think I have expressed myself as fully as I can at present in regard to my understanding of the principal office of the Alien Property Custodian, and his having agencies anywhere. In that connection I think the comparison I have made of the railroads is a fair one. The local agencies of the railroads do not constitute the office of the railroad company. They may be scattered, and they are scattered all over the United States, and in Canada and Mexico.

Mr. Powell: That is true, your Honor.

The Commissioner: Now, to say that those departments are the office of the company——

Mr. Powell: I agree perfectly with your Honor, to this extent: If the Alien Property Custodian had a branch office, we will say, in Pennsylvania, for a specific purpose, and it was shown that the office was not authorized to do anything on behalf of the Alien

147 Property Custodian, except a specific function and never did, and that fact were known, then it might very well be that, so far as this case was concerned, the office there would be immaterial; but it seems to me if we show before your Honor that the Alien Property Custodian had a branch office here, and he held himself out as having an office in New York, which, to a person coming in there, would appear to be a branch of the Alien Property Custodian, or as he says in his report, New York Branch Office, it is not incumbent upon us to go into details of the organization of that office and find out exactly what it could do and what it could not do.

The Commissioner: If you were called upon to make a report to the Department of Justice, would you consider that the Department of Justice had an office for the purpose of receiving a report in the City of New York?

Mr. Powell: I think I very well might, your Honor.

The Commissioner: You might make it to the District Attorney's Office here, or you might go over to the building across the way here, to the Park Row Building, to make it to the Department of Justice, and you would find the words, "Department of Jus-
148 tice" over there on the door.

Mr. Powell: I think I might very probably do that, Mr. Commissioner.

The Commissioner: Well, it does not seem reasonable to me.

Mr. Powell: Very well, sir. I take an exception to your Honor's ruling. I am through with Mr. McGuire, then; and I will, if your Honor please, submit some cases to your Honor on that proposition later on.

The Commissioner: Very well. I will hear you on it.

Mr. Harper: That is all, Mr. McGuire.

149 PAUL H. FAIRCHILD, a witness called on behalf of the Defendant, being first duly sworn, testified as follows:

Direct examination.

By Mr. Powell:

Mr. Powell: If your Honor please, I am going all through the same story with Mr. Fairchild, as I did with Mr. McGuire, as far as the office up on Forty-second Street is concerned, and as far as I can I shall endeavor not to wander too far afield, under your Honor's ruling; and I will try and shorten it as much as I can.

Q. Mr. Fairchild, what is your relation to the corporation known as James McCreery Realty Corporation?

A. Vice-President.

Q. What is the relation of that corporation to the premises known as No. 110 West 42nd Street, Borough of Manhattan, City of New York?

A. Owners.

Q. How long have they been the owners, approximately?

A. Seventeen years.

Q. Have you produced any leases covering any portion of those premises by the official of the Government known as the Alien Property Custodian?

A. I have three leases.

Mr. Powell: Do you want me to introduce these in evidence,
150 or do you want me to——

Mr. Harper: I think they had best be produced and examined.

Mr. Powell: Yes. Certainly.

Mr. Harper: I would suggest, Mr. Powell, that you introduce them and have them marked and then that you yourself state for the record a summary of them.

Mr. Powell: Very well. I offer in evidence——

The Commissioner: I presume they are identical in form?

Mr. Powell: Yes, sir. If the Commissioner please, I offer in evidence leases—rather a lease by the James McCreery Realty Corporation to A. Mitchell Palmer, Alien Property Custodian, covering Rooms 506-7, 503-8-10, 509, 511, 512, 513, 514, 515-16-17-18-19-20, 521, 522, 523, 524, 526, 527, 528, 529, 530 and 531, in the fifth story of the building known as No. 110-112-114 West 42nd Street, in the City of New York, for the period beginning the 1st day of May, 1918, and ending on the 31st day of June, 1918; the premises as expressed by the lease "to be used and occupied as an office for the transaction of business of the Alien Property Custodian," and purporting to be signed by the James McCreery Realty Corpora-
151 tion, by P. H. Fairchild, Vice President, and A. Mitchell Palmer, Alien Property Custodian. I offer this document in evidence, if the Commissioner please.

Mr. Harper: The Government makes no objection upon the ground that the signature has not been proved and concedes the genuineness of the signature of the Alien Property Custodian, but objects to the document as immaterial and irrelevant.

The Commissioner: Objection overruled.

(Document or lease last above referred to and offered in evidence by Mr. Powell, marked Defendant's Exhibit L.)

Mr. Powell: If the Commissioner please, I next offer in evidence lease of the James McCreery Realty Corporation to the Alien Property Custodian, dated July 2nd, 1918, covering rooms Nos. 501 to 531, inclusive, the entire fifth story of the building, situated at No. 110-112-114 West 42nd Street, in the City of New York, for the term of ten months, commencing on the 1st day of July, 1918, and ending on the 30th day of April, 1919; the premises as expressed by the lease, "to be used and occupied as an office for the transaction of the business of the Alien Property Custodian," and the lease purporting to be signed by the James McCreery Realty Corporation, by P.
152 H. Fairchild, Vice President, and signed by A. Mitchell Palmer, Alien Property Custodian.

Mr. Harper: If the Commissioner please, the genuineness of the signature is conceded, but the document is objected to as incompetent, irrelevant and immaterial.

The Commissioner: Objection overruled.

Mr. Harper: The point of that objection, sir, is that it is immaterial and irrelevant, in that the offense was completed on December 20th, 1918, the last day to which the President had extended the time for filing the reports.

The Commissioner: What is the date of the lease?

Mr. Harper: July 2nd, 1918.

Mr. Powell: In that connection let me state that the indictment says that the defendant neglected to file the report on the 20th day of December, and has continuously neglected from that date down to the date of the indictment.

Mr. Harper: Which is a mere matter of aggravation. The offense was completed when he had not reported on December 20th.

The Commissioner: Objection overruled.

(Paper last above referred to and offered in evidence by
153 Mr. Powell, marked Defendant's Exhibit M.)

Mr. Powell: If the Commissioner please, I next offer in evidence lease of the James McCreery Realty Corporation to the Alien Property Custodian, dated September 25, 1918, covering premises Rooms Nos. 617, 621, 623, 624 and 626, in the sixth story of the building situated at No. 110-112-114 West 42nd Street, and as expressed by the lease: "To be used and occupied as an office for the transaction of the business of the Alien Property Custodian," covering the term of 7-1/2 months, beginning on the 16th day of December, 1918, and ending on April 30th, 1919, and purporting to be signed by James McGreery Realty Corporation, by P. H. Fairchild, Vice President, and A. Mitchell Palmer, Alien Property Custodian.

Mr. Harper: The same concession as to the genuineness of the signature of the Alien Property Custodian, and the same objection as to materiality and relevancy of the evidence. May I urge that objection at this time, sir, in regard to these documents, for this reason: if your Honor admits this evidence to be competent, it will be necessary, perhaps, for the Government to show in rebuttal the character of the occupancy of these premises, and is that something which the Government should fairly be asked to do? The
154 indictment, it is true, does state in almost the last words there that the defendant continuously neglected and omitted to file a report down to the date of the indictment, but the indictment would be just as good and just as valid if those words were omitted, because the offense was completed on December 20th, 1918, the last date to which the President had extended the time for filing reports; and those words are there chiefly for the information of the Court, and are, if anything, only a matter of aggravation of the offense and do not go to the substance of it, and, therefore, I think that this testimony should be ruled out as immaterial.

The Commissioner: The evidence goes to controvert what I think you state as surplusage in the indictment. However, inasmuch as the indictment does make that allegation, I will admit the documents in evidence.

(Document last above referred to and offered in evidence by Mr. Powell, marked Defendant's Exhibit N.)

Q. Mr. Fairchild, the signature, P. H. Fairchild, on the three leases that have just been introduced in evidence, are your signatures?

A. Yes, sir.

Q. And a duplicate of each of those three leases was de-
155 livered to the Alien Property Custodian?

A. Yes, sir, as far as I know.

Mr. Powell: That is all.

Mr. Harper: No cross-examination.

MARVIN W. WYNNE, a witness called on behalf of the Defendant, being first duly sworn, testified as follows:

Direct examination.

By Mr. Powell:

Q. Mr. Wynne, where do you reside?
A. Yonkers, New York.
Q. What is your occupation?
A. I am a lawyer.
Q. Did you yesterday morning go to the premises known as No. 110 West 42nd Street, Borough of Manhattan, City of New York?
A. I did; I stopped off there on my way down to the office?
Q. Is there a directory in the main hall of that building on the ground floor?
A. There is.
Q. Did you examine it?
A. I did.
Q. Is there any reference there to the Alien Property Custodian?

Mr. Harper: Objected to, if your Honor please. This is
156 testimony subsequent to the finding of the indictment. The question of what appears there now is certainly immaterial under any theory of the case.

The Commissioner: Objection sustained.
Mr. Powell: Exception.
In order to save a lot of time, if the Commissioner please, may I make a general offer here instead of asking Mr. Wynne a number of questions?
The Commissioner: Why, yes.
Mr. Powell: If your Honor please, I offer to prove by this witness now upon the stand that, yesterday morning, he went to the office of the building known as No. 110 West 42nd Street; that he examined the directory in the main hall, on the ground floor, of that building, and saw there an item reading: "Alien Property Custodian," Fifth Floor. That he took the elevator and went up to the fifth floor and got off and saw there a hall at one end of which was a desk and at which sat a young man working on some papers; that he went up to this young man and told him that he wished to report certain enemy-owned property——
The Witness: No, I did not do that.

Q. Am I wrong?
A. Yes. I said I wanted to find out how to report enemy-
157 owned property.

Mr. Powell: Well, the witness asked the young man how to report enemy-owned property; that the young man asked him whether he had any blanks of reports and the witness said no; that the young man then said, "I will get you some"; that the young man went into one of the rooms adjoining the hall and came back with

forms of report and handed them to the witness; that the witness then said——

The Witness: How can I serve them, what will I do with them?

Mr. Powell: Yes, "What will I do with those reports after I sign them?" That the young man replied that he could file them or mail them; that he asked the young man whether he could file them there or mail them there, and the young man said, "Yes."

That is my offer of proof, your Honor.

The Commissioner: I do not see how that is material here.

Mr. Powell: Because it is after the indictment.

The Commissioner: After the event, and it is a statement made without authority, made by an office boy, by a young man sitting at a desk.

Mr. Powell: Don't you think, sir, that there is such a thing,
158 your Honor, as the Government holding itself out as to the proper place to perform certain acts?

The Commissioner: Yes, I do.

Mr. Powell: Aside from the date question, there is no doubt in the world if Mr. Wynne had gone there with the real intention of making out a report, he would have received copies, as he did, and he would have gone back to the young man there and who was apparently there ready to answer questions, and he would have received them and filed them.

Now, even if granting, if your Honor please, that the Alien Property Custodian had a rule that those reports should have been filed in Washington, if he runs his business that way, this defendant could not be convicted of a crime in Washington.

The Commissioner: The whole proposition is that, up to the 20th of December 1918, his office was in Washington, and in no other place.

Mr. Powell: No, not on this evidence, your Honor.

The Commissioner: Under the indictment.

Mr. Powell: Well, yes.

The Commissioner: That he had an office in New York for the transaction of the same business at another time—well, that
159 would be a very different proposition; but how would that relate to the charge under the indictment? Because he has an office here now, it does not follow that he had an office in New York at that time, and none of your evidence tends to show it.

Mr. Powell: That he had an office prior to December 20th in New York. Mr. McGuire's evidence relates to as far back as October and November.

The Commissioner: But no general office. You have not connected that office with the business of the Department as you are offering to connect the present office with the Department.

Mr. Powell: That is true.

Mr. Harper: It seems to me, sir, that, as far as this offer of proof is concerned, it merely goes to the fact that Mr. Garvan had an obliging office boy.

Mr. Powell: No, it does not; it goes a good deal further than that. There is not the shadow of a doubt but from what happened there yes-

terday a man could have gone there and got a blank and filled it out, made it right out there, and could have filed it at 42nd street.

The Commissioner: Yesterday?

Mr. Powell: I am not addressing myself to the question of a
160 date. It is a good deal more than that; it is a good deal more than what Mr. Harper has characterized it here, as a polite or obliging office boy.

(Whereupon the further hearing in the above entitled matter was adjourned to Monday, December 23rd, 1918, at 10 o'clock A. M.)

Next Government's Exhibit 2.
Next Defendant's Exhibit O.

161 UNITED STATES OF AMERICA,
Southern District of New York:

Before Samuel M. Hitchcock, Esq., U. S. Commissioner.

UNITED STATES

vs.

EDWARD A. RUMELY.

New York, December 23, 1918.

Stenographer's Minutes.

Index.

Testimony of—	Direct.	Cross.	Redirect.	Recross.
Edward A. Rumely.....	117	148	201	204
Alfred J. Clayton.....	219	232	243	
Harold Harper	254			
Horace O. Kilbourn.....	270			

Wm. J. Finerty, Stenographer United States Courts, U. S. Commissioner's Office, Post Office Building (down town), New York.
Notary Public New York County, Kings County, Bronx County.
Telephone, 1412 Cortlandt.

POOR COPY

162 UNITED STATES OF AMERICA,
Southern District of New York:

Before Samuel M. Hitchcock, Esq., U. S. Commissioner.

UNITED STATES

vs.

EDWARD A. RUMELY.

New York, December 23, 1918

Hearing resumed pursuant to adjournment.

Appearances:

Francis G. Caffey, Esq., United States Attorney, for the Government;
Harold Harper, Esq., Assistant U. S. Attorney, of Counsel.
Powell, Wynne & Roberts, Esqrs., Attorneys for the Defendant;
Frederick J. Powell, Esq., of Counsel.

Mr. Powell: Dr. Rumely, will you please resume the stand?

EDWARD A. RUMELY, the Defendant, resumed the stand, having heretofore been duly sworn, testified further as follows:

Direct examination continued.

By Mr. Powell:

163 Q. Dr. Rumely, at the hearing on December 17th I asked you certain questions in reference to a sheet headed, "Receipts, 1917" in the upper half of the page, and "Disbursements" in the lower half of the page, as shown on pages 60 and 61 of the stenographic minutes of that hearing. I now hand you a sheet and ask you whether that is the sheet to which you referred in that testimony (Showing witness)?
A. That is.

Mr. Powell: If the Commissioner please, I offer that sheet in evidence, and I will say now that I am introducing that sheet in evidence instead of asking Dr. Rumely a series of questions, in order to save time.
Mr. Harper: I do not understand, Mr. Powell—well, are you offering this now because you believed it had been incorporated in the record when it had not; is that it? I have not read this part of the record as yet.
Mr. Powell: Yes. It never was offered in evidence. You see, you suggested that, instead of asking Dr. Rumely, going through the long form of asking him all these questions in regard to that item, by simply having it identified——

Mr. Harper: Well, this is the same sheet concern-
164 ing which you were questioning him the other day, and some of those figures do not appear in the record; is that it?

Mr. Powell: That is true. None of them do as regards the month of December.

Mr. Harper: I make no objection as to the form in which this testimony is offered, if the Commissioner please, but object to it as being irrelevant and immaterial. It does not appear in any way that it concerns the inquiry now before your Honor, a statement of the receipts and disbursements of the S. S. McClure Newspaper Corporation, subsequent to December 4, 1917.

The Commissioner: How is that material?

Mr. Powell: That is material, your Honor, on the point I mentioned the other day, that he proposed to show, if the Government's contention is correct, namely, that the stock was held by Dr. Rumely in behalf of the German Imperial Government, when it is incumbent upon him under the Trading With the Enemy Act, to procure a license for the doing of the various things brought out in this testimony various receipts and disbursements shown by that sheet; that inasmuch as such license was not procured, then on the assumption that a crime was committed, under Section 16 of
165 the Act, and therefore a report to the Alien Property Custodian which would disclose that fact, would not be required, as it would violate the defendant's constitutional right of self-incrimination. That is the purport of this testimony.

Mr. Harper: Now, sir, upon Mr. Powell's statement that the only relevancy of this paper is to show that Dr. Rumely committed another crime, according to counsel's theory, I do not see how that is competent upon the testimony, presumably given to exonerate him from this one.

Mr. Powell: I think that is very clear, your Honor, that all we can show on the Government's assumption that he could not have been required to make a report for the reason that I have just stated very clearly, he could not be indicted for failure to make such a report. I think that proposition is very clear.

The Commissioner: I am disinclined to refuse to admit the testimony on the ground of its immateriality, unless it is obviously so. I believe the defendant in this case should have an opportunity to present almost anything that he desires. There may well be an appeal taken from my findings, in case of my holding the defendant for removal, and then the whole matter would be before the
166 Court. When I say appeal, of course, the holding him for removal—the usual process to the Court when I would submit the testimony for what it may be worth. It strikes me as immaterial, but I am not going to disallow it on that ground.

Mr. Harper: May I urge on your Honor the fact that the inquiry is limited to determining whether there is probable cause. If you believe that a crime has been committed, and that it would be your Honor's duty to hold the defendant, unless it appears obviously that no crime has been committed in the District of Columbia, and a matter of a remote bearing as this would serve only to encumber the

record, if there is an appeal. I believe your Honor considers that the testimony is immaterial, and, therefore, I do not think it should be admitted.

The Commissioner: My present view is that it is not material, but I shall admit it in order that, upon an appeal, everything that is in any way pertinent to the issue, may be presented. My mind may change in regard to my view of its materiality.

(Whereupon the paper last above referred to and offered in evidence by Mr. Powell, was marked Defendant's Exhibit O.)

Q. Now, Doctor, I will repeat to you my question at page 60——

167 A. I have not seen page 60.

Q. I will read it to you. You did not answer it before. Referring to Defendant's Exhibit O, I ask you whether this statement correctly sets forth the receipts of the S. S. McClure Newspaper Corporation during the month of December 1917, from the Mail and Express Company, on account where so stated in the statement and also correctly sets forth the receipts by the S. S. McClure Newspaper Corporation from the National Park Bank as the proceeds of discounts by the S. S. McClure Newspaper Corporation, of notes of the Mail and Express Company, endorsed by the S. S. McClure Newspaper Corporation, where so stated in the statement; and also, where it sets forth the receipts by the S. S. McClure Newspaper Corporation for the Mail & Express Company on account of certain Liberty Loan transactions, where so stated in the statement, all during the month of December, 1917?

A. It does.

Mr. Harper: If the Commissioner please, I make the same objection.

The Commissioner: Same ruling.

Q. Referring to the same statement, I also ask you whether the lower half of the page headed, "Disbursements," correctly sets forth disbursements by the S. S. McClure Newspaper Corporation for the account of the Mail & Express Company where so stated in the statement?

168 A. Let me look at it, will you?

Q. Yes; for the month of December, 1917?

A. It does.

Q. Referring to the two items under the heading of "Disbursements," December 18th—the two items of December 18th, explain, please, what those items represent?

Mr. Harper: Just a moment. If your Honor please, may it be understood that the Government objects to all questions relating to the document which has just been received in evidence?

The Commissioner: Yes.

Mr. Harper: I realize, sir, that an exception is of no importance,

but I should not like to have it appear that it was received by consent.

The Commissioner: Yes, on Mr. Harper's objection—it may be noted that Mr. Harper objects to this line of examination by Mr. Powell.

Mr. Harper: And that it need not be repeated with each question.

The Commissioner: And need not be repeated, yes.

A. Payment of December 18th, salary check of $250.00, to Edward A. Rumely.

Q. For what?

A. For the month of December, 1917.

Q. For services rendered?

169 A. To the corporation.

Q. To what corporation?

A. The S. S. McClure Newspaper Corporation; and on the same day payment of $410.00 to George H. Larke. This, I think, was in part for salary, but I cannot state what period it is for.

Q. Referring now, Dr. Rumely, to the discount by the S. S. McClure Newspaper Corporation at the National Park Bank, of notes endorsed, of notes of the Mail & Express Company——

Mr. Harper: May I hand to the Commissioner your Bulletin of Information?

Mr. Powell: Yes.

Q. Referring now, Dr. Rumely, to the notes of the Mail & Express Company, which were endorsed by the S. S. McClure Newspaper Corporation, and discounted by that corporation at the National Park Bank during the months of November 1917 and December 1917, as you have testified, please explain the extent of your personal participation, if any, in that transaction of discounting these notes and of arranging for that discount?

A. I went to the National Park Bank, to the officers who were known to me, and arranged for an increase in the line of credit, and agreed to pledge, to give my personal endorsement to the

170 notes, and did so do, but I cannot state the exact date on which I began endorsing the notes, but some time within this period.

Q. Did you personally endorse some of these notes to which we have been referring?

A. I agreed to do so, and I did.

Q. You did actually personally endorse them?

A. Yes, sir.

Q. For the benefit of——

A. The S. S. McClure Newspaper Corporation.

Q. And in order to secure the discount of the notes——

A. And in order to make the notes acceptable for discount at the National Park Bank.

Q. Did the National Park Bank have any collateral, receive any collateral as security for the line of credit represented by these notes?

A. Do you mean from the Mail & Express Company, or from the McClure Company?

Q. From the McClure Company?

A. It received from the McClure Company $25,000 in bonds of the Mail & Express Company which were owned by the McClure Company for the excess over $75,000.

Q. For the excess credit?

A. For the excess line of credit over $75,000.

Q. Well, some of these notes shown in Defendant's Exhibit
170½ O, and also some of the other notes discounted in November, to which you referred, were—the discount of those notes was in part secured by the pledge of bonds, as you have just stated?

A. Oh, it would be impossible to fix any particular note or notes, but all of the notes, when the notes exceeded seventy-five thousand dollars, the notes discounted exceeded seventy-five thousand dollars, the twenty-five thousand dollars of bonds applied to any note outstanding.

Q. I say, some of these notes to which I have just referred, the discounting of some of these notes were secured by the pledge of bonds of the Mail & Express Company?

A. You could state it that way, or possibly better, that all the notes were secured by the bonds, because any particular note or notes might be the one regarded in excess of $75,000, the $75,000 line of credit.

Q. Did some of those bonds so pledged, subsequently become your personal property?

A. Yes, sir.

Q. After they became your personal property, did you allow them to remain with the National Park Bank as security for these notes?

Mr. Harper: Just a moment. I object to that question, sir, as manifestly having ny relevancy whatever to the question as to some transaction between the witness individually and the National Park Bank.

171 Mr. Powell: Your Honor, this shows distinctly, this is the very clearest kind of evidence to show the personal pledging of this witness's credit which brings him squarely within the definition of the Trading with the Enemy Act, and I think this particular testimony here is probably the most important of all.

In other words, it shows that this witness was pledging his personal credit on behalf of this corporation, and of its stockholders, and which brings him squarely within that section, as we contend.

Mr. Harper: I understood, sir, that the theory upon which this testimony was offered, was that the S. S. McClure Newspaper Corporation was doing business and that, therefore, the S. S. McClure Newspaper Corporation required a license; that it was trading without a license; that, therefore, for the witness to have reported that the Imperial German Government owned stock would have been a confession that the company was trading without a license; and therefore how could the personal transaction between the witness and the National Park Bank have any bearing on that subject?

Mr. Powell: It is not only as Mr. Harper has stated, your Honor, but it still goes further—as to the effect also that Dr. Rumely personally was trading on the Government's assumption that the
172 stock was owned by the German Imperial Government; that Dr. Rumely personally was trading for the benefit of the holders of that stock, and therefore personally should have required, should have taken out a license.

Mr. Harper: As I understood the question, it was whether he was pledging the bonds of the Mail & Express Company with the National Park Bank. It is not charged that he failed to report anything of the Mail & Express Company.

Mr. Powell: Those were bonds of the S. S. McClure Newspaper Corporation, and they belonged to the S. S. McClure Newspaper Corporation, but they were bonds executed by the Mail & Express Company; in other words, the Mail & Express Company was the obligor on the bonds; the S. S. McClure Newspaper Corporation was the owner of them.

Mr. Harper: Then, sir, I should object to that upon the ground that it was no evidence of trading in violation of the act.

Mr. Powell: I think that is very easily answered.

Mr. Harper: Any person might trade in the bonds, with an enemy corporation, I take it, provided the trading was not done on behalf of the corporation.

Mr. Powell: The Trading With the Enemy Act specif-
173 ically provides—it is Section 2, I think, down to the words "to trade."

The Commissioner: Section 2, yes. I have got that.

Mr. Powell: The words, "to trade."

The Commissioner: Yes.

Mr. Powell: Now, this testimony shows clearly that both the S. S. McClure Newspaper Corporation and Dr. Rumely were loaning and extending credit, and, therefore, under the act, was trading under the Government's assumption.

Mr. Harper: Well, Dr. Rumely, sir, was an American citizen, and the National Park Bank was a New York corporation. It was not unlawful for Dr. Rumely to trade or to pledge any bonds that he might have, and it was not unlawful for him to trade with the National Park Bank.

Mr. Powell: It was unlawful for him to trade with the National Park Bank, for the benefit of an alien enemy.

Mr. Harper: I don't quite see how your question raises that point.

The Commissioner: What is the question?

(Last question read by the stenographer.)

Mr. Powell: In other words, if the Commissioner please, he was pledging his personal credit for the benefit of the S. S. Mc-
174 Clure Newspaper Corporation, and the owners of its stock. It is not an abstruse point, sir. If the German Imperial Government owned the stock of the S. S. McClure Newspaper Corporation, as the Government alleges, and Dr. Rumely went to the National Park Bank and pledged his individual personal bonds with

the National Park Bank, in order to permit the S. S. McClure Newspaper Corporation to discount notes and receive the proceeds of the discount for its own purpose, there can be no question whatever that Dr. Rumely was pledging his personal credit for the benefit of the German Imperial Government.

The Commissioner: You may answer.

Q. (Question read.)

A. I did allow them to remain as security for the notes of the S. S. McClure Newspaper Corporation.

Q. That was at least——

A. For the discount of the S. S. McClure Newspaper Corporation.

Q. Notes?

A. Yes, the notes discounted by the S. S. McClure Newspaper Corporation.

Q. That was at least in part after November 5, 1917, and prior to December 20th, 1917?

Mr. Harper: Objected to, if your Honor please, as being
175 too general, not specific as to time.

Mr. Powell: Very well. I will withdraw the question.

Q. Did some of these bonds become your individual property prior to December 20th, 1917?

Mr. Harper: Objected to as calling for a conclusion, as to whether they became the property of the witness or not.

The Commissioner: The objection is sustained.

Mr. Powell: I would respectfully ask that my exception be noted.

The Commissioner: Your exception may be noted.

Q. From whom did you acquire—you have stated that the bonds originally belonged to the S. S. McClure Newspaper Corporation. Did you acquire the bonds from the S. S. McClure Newspaper Corporation?

A. I would like to correct the inference——

Q. If you cannot answer, simply say you cannot answer, doctor.

A. Yes, I acquired the bonds from the S. S. McClure Newspaper Corporation, but it is possible that some of the bonds *that* were discounted and I think probably there were bonds that I personally had acquired at an earlier date, about October 1st.

Q. But referring——

176 A. But part of them——

Q. Now, wait. I am referring to the bonds which were formerly owned, which formerly belonged to the S. S. McClure Newspaper Corporation, and I ask you when you acquired, when the S. S. McClure Newspaper Corporation transferred those bonds to you?

A. Between November 10th and November 12th.

Q. 1917?

A. 1917.

Q. And it was after that that you left them with the National Park Bank as security for this line of credit?

A. It was.

Q. And prior to December 20th, 1917?

A. Yes.

Q. Referring to these notes, did you personally endorse some of them?

A. I did.

Q. At the time that they were discounted at the National Park Bank?

A. Before they were sent over to the National Park Bank; some member of the McClure Company brought them to me to sign.

Q. To endorse?

A. To endorse.

Q. Personally?

177 A. Personally, yes, and I endorsed them before they were sent over to the bank.

Q. By personally endorsing them, I mean personally, your personal endorsement, pledging your own credit?

A. Some of them were signed by me as an officer of the company, and, in addition, by me personally.

Q. You are sure of that?

A. I am sure I endorsed a very large number of the notes personally.

Q. Personally?

A. Yes, personally.

Q. In this testimony as to the financial transactions between the Mail & Express Company, and the S. S. McClure Newspaper Corporation, during the months of November and December, 1917, to which you have testified, reference has been made to the various receipts and disbursements as between the two corporations of a Liberty Loan transaction. What was your personal participation, if any, in that series of transactions?

A. I directed that the discount should be made by the S. S. McClure Newspaper Corporation, to purchase the Liberty Loan, and directed that the S. S. McClure Newspaper Corporation should accept from the Mail & Express Company, a payment on those bonds in installments as the moneys were collected from the employees and officers of the company, and I arranged for the credit.

178 Q. Credit where?

A. I think it was at the Atlantic National Bank.

Q. For the purchase of the bonds?

A. For the purchase of the bonds.

Q. Do I quote you correctly in saying that you stated that the principal business of the S. S. McClure Newspaper Corporation was the holding of stock of the Mail & Express Company, and the financing of the Mail & Express Company?

A. You do.

Q. Describe some other activities of the S. S. McClure Newspaper Corporation?

A. The S. S. McClure Newspaper Corporation owned the stock of the Evening Mail Syndicate.

Q. Was that a corporation?

A. A corporation organized under the laws of New York, with

Ten Thousand Dollars of capital at first, and subsequently increased to Twenty-five Thousand Dollars of outstanding capital stock; the McClure Company financed the Evening Mail Syndicate by additional loans to the Syndicate.

Q. What was the business of the Evening Mail Syndicate, incorporated?

A. The evening Mail Syndicate dealt in the Goldberg Cartoons and other cartoons and news articles, sold them to the Evening Mail and newspaper- throughout the country.

179 Q. What else did the S. S. McClure Newspaper Company do?

A. It owned the Evening Mail Realty Corporation, a New York State corporation, which leased premises at No. 25 City Hall Place, and which purchased a large amount of printing machinery and equipment required in the business of the Mail & Express Company, and leased it to the Mail & Express Company.

Q. Has the Evening Mail been published continuously from June 1, 1915, to date?

A. On every weekday, excepting Sundays and holidays.

Q. Can you describe any other financial transactions between the S. S. McClure Newspaper Corporation and the Mail & Express Company, in the month of November 1917?

A. Of course, other than the transactions referred to here?

Q. Yes.

A. The S. S. McClure Newspaper Corporation subscribed to $400,000 of stock of the Mail & Express Company, and paid for it by the cancellation of notes against the Mail & Express Company, that is held against the Mail & Express Company, and it also purchased——

Q. What was the amount of capital stock so subscribed for?

A. Four hundred thousand dollars, that is, it put down a stock subscription, a credit of $400,000, and established a stock subscription credit of $400,000.

180 Q. By the cancellation——

A. Of over $500,000 of notes.

Q. Of the Mail & Express Company?

A. Of the Mail & Express Company.

Q. Held by whom?

A. The S. S. McClure Newspaper Corporation.

Q. Yes. Anything else?

A. It purchased $60,000 of Second Mortgage Bonds of the Mail & Express Company.

Q. And paid for them how?

A. And paid for them by the cancellation of $120,000 of notes of the Mail & Express Company.

Q. Which it held?

A. Which it held.

Q. What was the general purpose of that transaction so far as the Mail & Express Company.

Mr. Harper: Objected to.

The Commissioner: Objection sustained.

Mr. Powell: Very well. I will withdraw the question.

Q. When were the notes of the Mail & Express Company to which you have just referred, cancelled and discharged as part of this transaction?

A. The records show on November 30th, 1917.

Q. In addition to the various transactions to which you
181 have testified, did you have any further personal transaction or transactions with the S. S. McClure Newspaper Corporation in November, 1917,

A. I purchased from the S. S. McClure Newspaper Corporation $200,000 of the notes that it held against the Mail & Express Company for $100,000 which I paid by the issuance of my personal note for $100,000 with four per cent interest.

Q. Payable to whom?

A. Payable to the S. S. McClure Newspaper Corporation.

Q. When was that done?

A. It was between November 10th and 12th.

Q. 1917?

A. 1917.

Mr. Harper: That was stock of which corporation?

Mr. Powell: They were two notes.

The Witness: Notes owned by the S. S. McClure Newspaper Corporation, and issued by the Mail & Express Company.

Q. In the hearing of December 17th, 1918, as shown on pages 63 and 64 of the stenographic minutes, I asked you whether any license under the Trading With the Enemy Act had been secured from the President of the United States or any of his representatives, to do any of the things referred to in that portion of the testimony——

182 A. Neither by the——

Q. Now, wait a minute. And I now ask you whether any application for any such license was made so far as you know?

A. No.

Q. Did the S. S. McClure Newspaper Corporation at any time receive from the President or any of his representatives, a license under the Trading With the Eenemy Act to do any of the things to which you have referred in your testimony here today, or to which you referred in your testimony of December 17th?

A. It did not.

Q. Did you receive a license on its behalf?

A. I did not.

Q. Did anyone receive a license on its behalf?

A. Not to my knowledge.

Q. Was any application made by anyone to the President or his representatives for any such license?

A. Not to my knowledge.

Q. Did you receive a license from the President or any of his representatives to do any of the matters or things to which you re-

ferred in your testimony today, or in your testimony given on December 17th ?

A. I did not.

Q. Did you apply for any such license?

183 A. I made no application.

Q. Did the German Imperial Government receive any license from the President or any of his representatives to do any of the matters or things referred to?

A. I had no communication with the German Imperial Government.

Q. That is not an answer. Did it receive any license so far as you know?

A. Not to my knowledge.

Q. Did it apply for a license, as far as you know?

A. Not to my knowledge.

Q. In your previous testimony you stated that the S. S. McClure Newspaper Corporation acquired 3800 shares of the capital stock of the Mail & Express Company out of a total outstanding issue of 4000 shares, around June 1, 1915, and that thereafter it acquired the additional 200 shares. I ask you now approximately when it acquired those additional 200 shares?

A. The additional 200 shares were acquired in about February 1918, but I think not by the S. S. McClure Newspaper Corporation, but by me personally.

Q. I see. So that you wish to correct your testimony in that respect?

A. Yes.

Q. It was you, and not the S. S. McClure Newspaper

184 Corporation that finally acquired those additional 200 shares?

A. That is my best belief. I have not had an opportunity to check up the records.

Q. But it was either you or the S. S. McClure Newspaper Corporation which acquired those 200 shares?

A. I am sure that either one of us, I think, required them at that time, and I am now reasonably certain that it was I who acquired them, and not the S. S. McClure Newspaper Corporation.

Q. Now calling your attention to Defendant's Exhibit- H, I, J and K, to which I shall refer for brevity as the Lyon notes, I call your attention to the fact that these notes, each of these four notes, recites that it is secured by the pledge of a certain number of shares of the capital stock of the S. S. McClure Newspaper Corporation. Is the S. S. McClure Newspaper Corporation so referred to, the S. S. McClure Newspaper Corporation to which you have referred in your testimony?

A. It is the same company.

Q. Was the capital stock of the S. S. McClure Newspaper Corporation pledged to secure each of these notes as recited?

A. It was.

Q. On their respective faces?

A. Yes.

185 Q. What is your answer?

A. It was.

Q. Approximately what proportion of the total outstanding capital stock of the S. S. McClure Newspaper Corporation was represented by the stock so pledged under these four notes?

A. Approximately — I have not the figures — approximately seventy-five to ninety per cent.

Q. Were the certificates representing the stock originally pledged under these notes subsequently returned to you?

A. Yes.

Q. By Walter Lyon?

A. They were.

Q. About when was that?

A. September, middle of September 1917.

Q. Did you thereafter hold those certificates?

A. I did.

Q. Did the certificates for those shares stand in your name?

A. After October 1st.

Q. 1917?

A. 1917.

Mr. Harper: You mean on the books of the corporation?

Mr. Powell: I mean on the books of the corporation, yes,
186 I do.

The Witness (continuing): On the books of the corporation, with a possible one share for legal reasons in some one else.

Q. Well, my question was directed to the stock pledged under the notes?

A. Yes, sir. Well, then, yes.

Q. After November 6th, 1917, did substantially all of the stock of the S. S. McClure Newspaper Corporation, stand in your name on the books of the company?

A. All, with the exception of a share or two.

Q. I say, substantially?

A. Substantially all, yes.

Q. Did you after the 6th day of November, 1917, vote the stock of the S. S. McClure Company that you held?

A. I did.

Q. Did you vote it prior to December 20th, 1917?

A. I did.

Q. Referring to pages 36, 37 and 38 of the stenographer's minutes—the hearing held on December 17th, 1918—I asked you certain questions with reference to your presence in Washington, D. C. Do those answers apply equally to the District of Columbia?

A. They do. I was never in the District of Columbia excepting when I was in Washington.

187 Q. You were not within the District of Columbia on December 20th?

A. I was not.

Q. 1917; is that correct?

A. That is correct.

Mr. Powell: Now, your Honor, I want to ask a series of questions, if it does not run counter to your Honor's rulings, and there is one ruling I am not just quite clear about.

I think your Honor ruled that, at present at least, you would not permit me to introduce evidence as to the expenses incurred by Dr. Rumely in preparing his case under the New York indictment. Is that correct?

The Commissioner: That is quite correct.

Mr. Powell: I want to urge that point on your Honor again a little later; but am I correct in assuming that you also ruled that I could introduce evidence as regards the preparation for his defense to the Washington indictment? I am a little unclear on that point.

The Commissioner: It seems to me that that can only be shown by way of estimate and by a statement of what would be necessary for him to do in order specifically to prepare for his defense in
188 Washington, that is to say, the attendance of witnesses in Washington from here; expense of counsel, if necessary, for him to have in Washington.

Mr. Powell: I was not going to ask him for any figures in dollars and cents at all, but simply to bring out a series of things you have just mentioned generally.

The Commissioner: Why, I do not suppose you could make it very specific, but I think you are entitled to show the expense that he would be put to in a general way in trying to have this case prepared for trial in Washington. As to the expense incurred, or to be incurred in the preparation of the defense of the indictment here, I do not regard that as material.

Mr. Powell: Well, if your Honor please, I have just three or four general questions to ask.

Mr. Harper: I cannot quite see the materiality of the testimony in any event. Of course, if the crime was committed in Washington, then, of course, the removal—and not in New York—then, as I understand it the removal to Washington must take place. Is it your Honor's idea that if the crime was committed in both places, that it would be a question of a convenience?

The Commissioner: Yes.

Mr. Powell: I do not think you will mind these questions,
189 Mr. Harper, as I shall put them.

Mr. Harper: Well, all right. As long as you don't think I will mind them, go ahead and ask them.

The Commissioner: Of course, if the offense is triable there alone, why, then the matter of expense does not cut any figure; but that is the very point which is in controversy here.

Mr. Powell: Which is one of the things, your Honor.

The Commissioner: Yes.

Q. In connection with your preparation for trial on the indictments heretofore found against you in this jurisdiction, you have engaged counsel?

A. I have.

Q. New York counsel?

A. New York counsel.

Q. What have your New York counsel advised you with reference to their being willing to try the case for you in Washington, in case you are compelled to go there?

A. They told me that I must employ additional counsel in Washington, or counsel in Washington.

Q. If you are removed to Washington and tried there, will it be necessary for you to assure an adequate preparation for trial there to have in Washington various papers?

A. A very large number of papers.

190 Q. Well, give his Honor an approximate idea of the papers you will have to take there?

A. Personal files and records. There are a very large number of records which are part of the working organization of the Mail & Express Company.

Q. Well, give his Honor some idea, a bookcase full, or two or three bookcases full, or a cartload full, or what? Give his Honor some idea of the extent of those files.

A. The extent of the files cover a very active three years, and I cannot say which papers I shall need, what will be called for, and therefore will have to take everything that can possibly pertain to the matter, and that is a large part of a room full.

Q. Will you require records other than your own, or those of the Mail & Express Company?

A. The financial transactions all check in with the working records of various banks.

Q. Where?

A. In New York City, and officers of the bank in New York.

Q. That is, you will require the working records of the bank here?

A. The bank here, yes. My bank deposits are all here and not in Washington.

191 Q. Do many of your witnesses reside in New York?

A. A very large percentage of them.

Q. Are some of them at present engaged in the Evening Mail?

A. Many of them are engaged in the Evening Mail.

Q. Have you any information, or has your counsel any information, so far as you know, of what evidence the Government is going to rely upon other than what it has published in the newspapers from time to time?

Mr. Harper: Objected to as manifestly improper.

Mr. Powell: Well, I will withdraw that, then. I meant no insinuation by that.

Q. Have you, except from the public press, received any information, or has your counsel received any information, so far as you know, as to the evidence upon which the Government is going to rely, or the witnesses upon which the Government is going to rely in the trial at Washington?

Mr. Harper: Objected to, if your Honor please. The defendant is entitled only to know whereof he is charged, and that is sufficiently set forth in the indictment.

The Commissioner: Objection sustained.
Mr. Powell: Exception.
May I state my reason for that question?
The Commissioner: Yes.
192 Mr. Powell: It is this: that the truth is that it is impossible for Dr. Rumely to determine in advance of trial exactly the witnesses he will need, because we do not know exactly what line of attack the Government is to make. It is, therefore, impossible for him to determine, it is therefore necessary for him to have in Washington a great many witnesses whom he may never call. Now, if Dr. Rumely should call on that theory, the witnesses which he might possibly want, I do not assume the Evening Mail could be published.
The Commissioner: That statement of yours, Mr. Powell, may stay on the record, and I think covers the situation completely.
Mr. Powell: All right, sir. Thank you.
Your witness, Mr. Harper.

Cross-examination.

By Mr. Harper:

Q. Dr. Rumely, you stated for the purpose of your trial in Washington, that you are going to take numerous records with you?
A. I expect to. I have been told by counsel that it will be necessary to do that.
Q. And that it will be necessary to take as much as a room full of records?
A. Well, all the files that are available.
193 Q. Well, did I understand you to testify or did you testify or did you not testify that it was necessary for you to take a room full of records?
A. That is a loose expression. A very large number of files will be required.
Q. My question is, sir, that whether you testified it was going to be necessary to take a room full of records with you. Did you so testify?
A. That is my present opinion, yes.
Q. Was that testimony true, that it would take a room full of records?
A. The testimony was true, that that was our expectation, not knowing what would be needed, and we would have to take everything that might be called into question.
Q. How big would the dimensions of that room be?
A. The records would cover the side of that room to the end there (indicating in the Commissioner's room, No. 314 of the U. S. Court House and Post Office Building), files.
Q. And that is a room about——
A. About ten by fifteen.
Q. And how high?
A. A filing case high.
Q. How high would this filing case be?
A. A standard filing case.

194 Q. Well, how high is a standard filing case?

A. About four drawers high.

Q. Will you give it to me in feet.

A. Four and a half to five feet.

Q. In other words, those records you propose to take down to Washington would occupy a room fifteen feet long and ten feet wide, and four feet high?

A. Occupy a floor space of a room of that size.

Q. And the room would not be full, then; there would still be considerable space left before you reached the ceiling of the room, would it not?

A. Every room has that space, of course.

Q. Either you or your representatives have been through the files of the Evening Mail, have they not?

A. I have not. I have not been in the Mail Building since July 8th.

Q. Have you had any representatives go through the files of the New York Evening Mail?

A. My attorneys have gone through some of the records there.

Q. Didn't your attorney go through all the records?

A. No, sir; I think some of the filing cases in my room.

Q. Are there still some records down there in the Evening Mail that you want?

195 A. That we shall use undoubtedly.

Q. What are they?

A. I cannot tell in advance of trial.

Q. Have you any notion as to how spacious those records would be?

A. There is the fifth floor of the Mail; in July it was about a quarter from the end, it was piled eight or ten feet high, containing records of old files of the paper.

Q. And what is the general nature of the records that are there on that floor?

A. Vouchers, old receipts, correspondence, copies of the paper, the editions—there are eight editions a day, copies of the papers.

Q. Didn't you have a representative go through that matter?

A. A representative as far as I know, went through the files in my office, but not through the business files and not through this huge mass of junk, this huge mass of records that apply to the past period.

Q. Are you now prepared on the New York indictment?

A. Not yet.

Q. You have not yet completed your preparation for that trial?

A. Not yet.

196 Q. Do you regard it as necessary for the trial in Washington, to go through all those records on the fifth floor that you have described?

A. They may not be needed at all, but I should regard it necessary to have a large amount of the material available for immediate reference, in case it would be called into question. It is not a question of its being used, but a question of convenience, if it is necessary, and having it on the spot. The initiative lies not with me, but with

others, so that I must have the evidence of what may be needed and I cannot determine in advance what that will be.

Q. Well, the evidence will be called for either by yourself or the Government?

A. Yes.

Q. You do not expect the Government is going to call upon you to produce files of the Evening Mail, do you?

A. The Government might call upon me in a question where I shall need—possibly the Government cannot foresee whether I would need the files of the Evening Mail.

Q. Then the records would have to be produced by some representative of the Evening Mail, of the Mail & Express Company, would they not?

A. They would, or by me.

Q. You have not access to them, have you?

197 A. My counsel has to some of them.

Q. You have not had a representative going through the files of the Mail office since last July or August, have you?

A. My counsel have been there from time —, at intervals: I do not recall the date; I think the principal work was done in August.

Q. Is it not true that last August one of your counsel and a representative of the Government went through the files of the Evening Mail, and each of them selected those papers which they regarded as material to this case?

A. Through some of the files of the Evening Mail, but not through all the files, Mr. Harper.

Q. Well, you have not done any searching of those files since last August?

A. The occasional piece of information that we have asked for.

Q. And since last August you have not made any requests, either personally or through your counsel, to be allowed to search through this mountainous pile of documents on the fifth floor?

A. I don't know what my counsel may have done, but I have not made any requests.

Q. Do you know the records you propose to take with you?

198 A. Do I know the records that I propose to take with me?

Q. Yes.

A. Not finally. I have not discussed with my counsel what they will wish, but they have told me that they shall wish to have available a very large number of records.

Q. You have copies, have you not, of all the papers which the Government regarded as material, and which were taken from the Evening Mail Office?

A. I think so.

Q. And you have been over those copies yourself?

A. Not all of them.

Q. You have seen them?

A. I have seen a considerable number of the copies, probably a majority of them, the large majority of them.

Q. You have seen papers that were taken from the Mail office last August, have you not?

A. No, I have not.

Q. Well, you have seen papers taken on your behalf, last August?

A. My personal papers?

Q. Yes.

A. Oh, yes, I have seen my personal papers.

Q. You have seen all the copies—I don't mean to examine each one—but you have seen the space occupied by the copies of
199 the papers which the Government took last August, have you not?

A. Yes, sir.

Q. Well, now, take those personal papers you have, and the papers selected from the Mail office last August, and tell us how big a bulk that would occupy?

A. Probably a trunkful.

Q. It would not occupy a room full then, ten by fifteen by four?

A. No, we could not state that. You would have to see the papers—when these papers are out of their file records, one could not go in and disintegrate the files of the Mail; it would be necessary to take the filing cabinet and clarify the papers along; I could not think of disintegrating a great file just on the moment that I was going to use it when I wanted everything orderly and in its place.

Q. You have got your personal files, you have got your copies of papers that the Government took out?

A. Yes, sir.

Q. And unless you are called upon to produce some papers that you do not know about, that is all you propose to take with you to Washington?

A. No, I would have to take back copies of papers and other records.

200 Q. What other records?

A. Other bookkeeping—now, this morning questions were asked that would have to be substantiated by the Mail & Express Company's books.

Q. Asked by the Government, or by your own counsel?

A. The Government yet has not asked me any questions.

Q. And these other records you refer to are what, files of the Mail?

A. The bookkeeping records of the Mail, some files, back files of the Mail.

Q. You have not got them in your custody?

A. The Mail & Express Company have the files I should wish to use.

Q. And they will be produced by subpœna upon the Mail & Express Company?

A. Probably yes.

Q. You do not expect to have to carry them yourself, do you? Is it not a fact, Dr. Rumely, that you will have to take down to Washington, that all you will have to take down to Washington will be copies of the papers taken by the Government from the Mail files last July or August, and your personal files? Is not that all you will have to take down to Washington?

A. I may have to see to it that we have very voluminous copies of the Mail.

201 Q. You will see to that by subpœna?

A. And I think we will meet with considerable resistance on the part of the officers there to coming over.

Q. You do not assume that the officers of the Mail are going to disobey the subpœna, do you?

A. No, but they might plead that it would interfere with their business.

Q. Are you perfectly sure that you cannot get the papers that you yourself will have to take down there in a steamer trunk?

Mr. Powell: Ask me that, Mr. Harper.

Q. Are you?

A. No, I am not sure of that at all; in fact, I think it is impossible.

Q. Impossible to get it in a steamer trunk, or impossible to say?

A. No, impossible to get it in a steamer trunk.

Q. Well, you saw these documents in your counsel's office?

A. One of my personal files would fill a very large ordinary trunk.

Q. And all that file relates to the subject of this case?

A. All of them relate to my activities in connection with the Evening Mail.

202 Q. Do you know a man named Hogan?

A. Frank J. Hogan?

Q. Yes.

A. I don't know him, but I have heard his name.

Q. You have employed him, have you not?

A. Yes.

Q. He is an attorney in Washington?

A. He is an attorney in Washington.

Q. Are you going to call any witnesses from Chicago?

A. Possibly.

Q. Are you going to call any witnesses from Boston?

A. I don't know.

Q. Are you going to call any witnesses from parts of the United States other than New York or Chicago?

A. It is possible.

Q. Or Boston?

A. Possibly.

Q. Some of your witnesses reside in Germany?

A. Some that I would like to have.

Q. Some reside in Switzerland?

A. Yes.

Q. Now, Dr. Rumely, I show you a certified photostat copy of a report to the Alien Property Custodian on Form No. 100, and which I believe in all respects the same as Defendant's Exhibit D, and I ask you if that is a correct photostat copy of the report which

203 you submitted to the Alien Property Custodian (showing witness)?

A. I think it is, Mr. Harper.

Q. And is that a correct photographic representation at the end of the report, of your signature?

A. I think it is a correct photographic representation of my signature at the end of the report.

Mr. Harper: If the Commissioner please, I offer that photographic report in evidence. It is in all respects, as I understand it, the same as Defendant's Exhibit D, except that it is a photographic copy, rather than a typewritten copy.

Mr. Powell: No objection, subject, of course, to correction, subject to the correctness of the copy when compared with the original. I assume it is correct. No objection.

(Photographic copy of report last above referred to and offered in evidence by Mr. Harper, marked Government's Exhibit 2.)

Q. To whom did you mail that report, Dr. Rumely?

A. A. Mitchell Palmer, Alien Property Custodian.

Q. To what address?

A. Washington, D. C.

Q. Where did you get the information upon which you mailed that report to A. Mitchell Palmer, Washington, D. C.?

204 A. I think counsel told me that the report had to be sent to Mr. Palmer.

Q. What counsel?

A. Hays, Kaufmann & Lindheim.

Q. What particular member of the firm of Hays, Kaufmann & Lindheim?

A. I think Mr. Lindheim.

Q. When was it that he gave you that information?

A. At the time when the report was to be mailed.

Q. Did you read the report carefully before you sent it, Dr. Rumely?

A. I read it.

Q. Did you read page 2 of it, which I now draw your attention to?

A. The whole page, you mean?

Q. Well, particularly did you observe that the report was directed—that the manner in which you made out that report was by filling out the printed form?

A. Yes.

Q. And did you observe in that printed form that the report was addressed to the Alien Property Custodian, Washington, D. C.?

A. I do not recall whether I observed that or not.

Q. But you did read the whole of the document?

A. As one does a printed document when one goes through
205 to find out what the questions are.

Q. Well, the making out of this report was an important thing for you, was it not?

A. Not in my mind.

Q. Just a casual matter?

A. I regarded it, yes.

Q. Did you read it, or didn't you read it?
A. I read it as one reads long printed documents, and fixed my attention upon the questions that were asked, and answered them.
Q. In whose hand are the spaces there filled out?
A. The original is not available so that I could see them, is it?
Q. No.
A. It is difficult for me to see.
Q. From the photograph?
A. I could speak with much greater certainty if——

Mr. Powell: You can answer that as far as you can tell from an examination of the photographic copy.

Q. Let us have your best opinion on that, doctor?
A. It is not my handwriting. I think it is in the handwriting of Mr. Norvin R. Lindheim.
Q. Where, if you know, was that report made out?
A. In the office of Hays, Kaufmann & Lindheim, excepting the affixing of my signature.
206 Q. How was the report brought to you for signature?
A. How was the——

Q. How was this report, if it was prepared in the office of Hays, Kaufmann & Lindheim, as you state, how was it brought to you for signature?

Mr. Powell: Objected to as incompetent, irrelevant and immaterial; and I have withheld my objection for quite a time because I did not want to interrupt; but I think we have gotten now a little too far afield, if the Commissioner please. The Doctor's testimony was simply that he signed and acknowledged that report at a certain place, and signed it.
The Commissioner: He may answer.
Mr. Powell: Exception.

Q. How was it brought to you for signature, sir,
A. I was at the office of Hays, Kaufmann & Lindheim when the report was made out.
Q. Who were present?
A. Mr. Lindheim and Mr. Kaufmann, and possibly the stenographer, but I do not recall; I am not conscious of that.
Q. How long were you in that office?
A. From twenty minutes to half an hour, possibly.
Q. Had the report been prepared before you came there or was it prepared while you were there?
207 A. It was prepared while I was there.
Q. Were all three in the room all the time that was being prepared?
A. I think so, yes.
Q. Did all three of you confer as to the form of that report?
A. With regard to the form of my report, we conferred as to the dates or amounts of the figures.

Q. You conferred as to the blank space or spaces, and not
the printed matter?
A. We conferred as to the figures or totals of the notes.
Q. Who was the stenographer that was there, Dr. Rumley?
A. I don't know.
Q. Would you know here again if you saw her?
A. I don't know whether it was a man or a woman.
Q. Do you know that there was a stenographer there?
A. There was a piece of typewriting that was attached to
report; that was done, I think, by a stenographer.
Q. Was that piece of typewriting dictated while you were th
A. It was.
Q. And subsequently brought in by the stenographer with
notes transcribed and attached to the report?
A. Attached to the report.
208 Q. And in your presence?
A. Yes.
Q. Did you sign the report at that time?
A. I signed it at the office of Messrs. Powell, Wynne, Lowr
Ruch.
Q. Did you yourself take the report from Hays, Kaufman
Lindheim, to the office of Powell, Wynne, Lowrie & Ruch?
A. I did.
Q. With whom did you confer at that office?
A. I looked for Mr. Powell, and it was late, and I found him
and I got Mr. Lowrie to acknowledge the signature.
Q. Did you yourself personally mail that report?
A. I did.
Q. Where did you mail it?
A. In the, I am not sure, but I think in the mail chute of
Broadway.
Q. Is that where your counsel, Messrs. Powell, Wynne & Lo
have their office?
A. Yes, sir.
Q. Did you mail any other documents in that same envel
A. I think the report of Mr. Kaufmann was given to me,
the request that I mail it.
209 Q. I show you the certified photostat copy of what
ports to be a report to the Alien Property Custodian
Hays, Kaufmann & Lindheim, by S. W. Kaufmann, and I ask
if that is a correct photostat copy of the document you maile
the same envelope?
A. I did not look at that, or scrutinize that report; I don't k
I cannot in detail, because I did not scrutinize that report.
Q. But you did know that you did mail a report signed by K
mann?
A. I think I did.
Q. Don't you know?
A. I don't positively know.
Mr. Powell: The best of your recollection is that you did?
The Witness: The best of my recollection is that I did, yes.

Mr. Harper: Thank you, Mr. Powell.

Q. You wrote a letter, did you not?
A. I did.
Q. That was just a formal letter of transmission, I mean the letter you enclosed with this report?
A. I have not the letter in mind, but I think I wrote a letter, but if I could refer to the files I could refresh my mind.
210 Mr. Powell: The letter, if any, to which Mr. Harper refers, is the letter which accompanied the reports, the two reports?
The Witness: Yes, sir.
Q. Dr. Rumely, you are not now under restraint of any kind, are you, that is, you are not under arrest?
A. I am under bail of $35,000.
Q. But I mean you are at liberty, you are at large?
A. Yes.
Q. You have no keeper here, you have no keeper here, have you? Don't I make myself clear?
A. I don't know whether that has a legal meaning or not.
Q. Well, you went home and slept in your own bed last night, didn't you?
A. Yes, sir.
Q. And you expect to go home and sleep in your own bed tonight?
A. Yes, sir.
Q. And nobody brought you here, and you don't expect anybody to take you away?
A. That is a fact.
Q. Have you been in Washington since December 2nd, 1918?
A. I have.
Q. For what period were you there?
A. Just a day or two at a time. For what period did you
211 say?
Q. My question was: since December 2nd, 1918, and you said yes.
A. Oh! December 2nd, 1918. Oh, no; oh, no; I have not been in Washington since a year ago.
Q. And you were not arrested in this proceeding until you appeared here before the Commissioner, and were arraigned practically simultaneously; is that correct?
A. That is true.
Q. And you were immediately enlarged upon bail on your own recognizance?

Mr. Powell: What proceeding do you mean, Mr. Harper?
Mr. Harper: My point is this: that Dr. Rumely has not been arrested in the Southern District of New York or anywhere else upon this Washington indictment, except upon the occasion when this proceeding was instituted before your Honor here, when he was taken formally under arrest and immediately arraigned and paroled in the Southern District of New York, in this room.
Mr. Powell: That is conceded.

Mr. Harper: Now, may I see, Mr. Powell, the notes you have offered in evidence?

Mr. Powell: Yes (producing).

212 Q. Dr. Rumely, I call your attention to Defendant's Exhibit K, and I ask you if you know in whose handwriting the words, "Cancelled 9/14/17," were written upon that note?

A. Somebody in the Kaufmann office.

Q. That is not your handwriting?

A. That is not my handwriting, no.

Q. Can you tell whose handwriting it is?

A. I think one of the partners of Mr. Kaufmann. He is blind, and somebody wrote it for him, is the best of my recollection.

Q. Was that note returned to you—on what date was that note returned to you?

A. On September 14th.

Q. 1917?

A. 1917.

Q. Who was it that handed it to you?

Mr. Powell: Your Honor, I would like to call attention here to the fact that I submit at this point the District Attorney is making Dr. Rumely his own witness. I have not even asked Dr. Rumely whether these notes were ever returned.

Mr. Harper: If your Honor please, this witness was asked this morning, if I recall rightly, about this transaction of September 14th, 1917.

Mr. Powell: The only question, if the Commissioner please,
213 I asked Dr. Rumely was whether the stock that had been pledged with Lyon for these notes had been returned to him. I have no objection to the evidence, except that I wish to call attention to the fact that, in my view, Dr. Rumely testified——

The Commissioner: You wanted the notes in evidence in their entirety in the first place, and I think, therefore, it is proper cross-examination. I will allow it.

Mr. Harper: If the Commissioner please, I think we are entitled to ask about the marks on them.

The Commissioner: Yes. He may answer.

Mr. Powell: I take an exception.

A. Mr. Kaufmann.

Q. Where did he hand it to you?

A. In his office.

Q. Who else was present?

A. I think both—at the time he handed them, or at the time——

Q. At the time when he handed that note to you?

A. Either Mr. Hays or Mr. Lindheim, or both, and there may have been a secretary there, but I don't know about that; I don't recall about that.

Mr. Harper: Mr. Powell, I should like to have these notes,
214 dated respectively, June 1, 1915, January 1917, February 20th, 1917, and April 19th, 1917, marked in evidence. I

believe that they are duplicate-originals of those that you offered in evidence.

Mr. Powell: I have no objection.

Mr. Harper: Well, just one moment before I have those notes marked.

Q. Dr. Rumely, I show you what purports to be a photostat copy of a letter dated December 4, 1917, and I ask you if that is a photostat copy of a letter signed by you; was that letter, in fact, signed by you (showing witness)?

A. That letter was signed by me, yes, sir.

Q. Do you recall that letter now?

A. I recall that letter now.

Q. Does it refresh your recollection upon the subject of whether the Kaufmann report was included in the same envelope?

A. It does not, no.

Q. Well, would you mind reading the last sentence there (showing witness)?

A. (Witness after reading.) Yes, on reading it, it does.

Q. So that you now clearly recall that the Kaufmann report——

A. That my impression before had been that it was, and this now confirms it.

215 Mr. Harper: If the Commissioner please, I now offer this letter in evidence and ask that it be marked Government's Exhibit 3.

Mr. Powell: I have no objection to it, if the Commissioner please, but always subject, of course, to correction upon comparison with the original.

The Commissioner: Yes.

(Letter last above referred to and offered in evidence by Mr. Harper, marked Government's Exhibit 3 of this date).

Mr. Harper: If the Commissioner please, I now offer the Kaufmann report, and I ask that that be marked Government's Exhibit 3-A.

Mr. Powell: Objected to as incompetent, irrelevant and immaterial. I do not see how by any possibility that is relevant to this proceeding, a report made by Mr. Kaufmann, who is not made a defendant here or in any way concerned in this proceeding.

Mr. Harper: Very well. I do not wish to crowd the record, sir, and it will suffice for my purposes that this be marked Government's Exhibit 3-A for identification. I believe, sir, that we are entitled to show the contents of that report, addressed to the Alien Property Custodian, but I shall not press it, sir.

The Commissioner: Forwarded by the defendant?

216 Mr. Harper: Yes; but I won't press it, however, because it will add to the record.

The Commissioner: It may be marked for identification then.

Mr. Powell: I take an exception to your Honor's ruling.

(The Kaufmann report last above referred to and offered for identification by Mr. Harper, marked Government's Exhibit 3-A for identification.)

Mr. Harper: Now, if the Commissioner please, I ask to have marked in evidence, these notes dated, respectively, June 1, 1915, January, 1917, February 20th, 1917, and April 19th, 1917. As I stated before, I believe they are duplicate-originals of those that Mr. Powell offered in evidence on behalf of the defendant.

Mr. Powell: I have no objection.

The Commissioner: Very well, then. They may be marked.

(Four notes last above referred to and offered in evidence by Mr. Harper, marked Government's Exhibits Nos. 4, 5, 6 and 7.)

Q. Dr. Rumely, I show you Government's Exhibits 4, 5, 6 and 7, and I ask you if they are duplicate-originals of the notes that have already been put in evidence by your counsel?

217 Mr. Powell: May it please the Commissioner, I object to the form of the question, because I know that one of the originals has certain writing on it, and the other one has not.

Mr. Harper: My question is limited to the typewriting contents and the signatures.

The Witness: I am uncertain—yes, as to the notes and signatures, they are——

Mr. Powell: As to the typewritten contents and signatures?

The Witness: As to the typewritten contents and signatures, yes.

Q. I call your attention to Government's Exhibit 4, being the note of June 1, 1915, and to a legible notation as follows: "This original received from Sielckens' representative, S. W. K. when notes were paid by deal of September 14, 1917. Dr. Rumely's copy could not be located. 10/3/17."

I suppose that is October 3, 1917. Will you tell me if you know in whose handwriting that notation is?

A. I think that is in the handwriting of my secretary, C. A. Lewis.

Q. And that date, 10/3/17, what was that intended to represent, if you know?

Mr. Powell: Ask him first if it is 10/3/17. I don't know.

218 Mr. Harper: It looks like 10/3/17, to me.

Mr. Powell: The question is directed as to whether that is 10/3/17.

The Witness: Do you ask first is that 10/3/17?

Q. Well, I will ask for your opinion, whether that is 10/3/17?

A. I think it is, but I don't know.

Q. And I assume you don't know what date it was intended to represent?

A. I do not.

Mr. Powell: I think your question is likely to be misconstrued when the record is written out. In my own mind I don't know whether you——

The Commissioner: Well, you may ask such questions as you desire on redirect.

Mr. Harper: Yes. It looks to me as though it was 10/3/17.

The Commissioner: Doctor, what is the date on that notation?

The Witness: It was not put there by me, but I think it is 10/3/17.

The Commissioner: October 3rd——

The Witness: October 3rd, 1917.

Q. Was it put there in your presence?

A. I think not.

219 Q. How did you- Mr. Lewis get that note in his custody?

A. Mr. Lewis handles my papers and keeps my records and these things, and when the obligation was discharged, we gave to him to keep in the cancelled voucher file that he holds for me, that note.

Q. Was that notation, "Cancelled 9/14/17"—was that put on the date that it bears?

A. I think it was; I don't know. There are two sets of copies, and I would have to go through them to make sure.

Q. You mean papers that are in evidence here?

A. There is the note that could not be found at that time.

Mr. Powell: What is that?

The Witness: There is the note that could not be found.

Mr. Harper: The witness states the Defendant's Exhibit H is the note which is referred to in the marginal notation on Government's Exhibit 4.

Q. Is that right?

A. I think that is it. Mr. Harper, since looking over these notes, and comparing the two sets, I would like to add this to the question you previously asked me: the notes were delivered to me on September 14th, cancelled; I do not recall whether the cancella-

220 tion was by the destruction of the signature, cutting it out, or this——

Mr. Powell: You mean the destruction——

Mr. Harper: If your Honor please, I do not object to the witness's making a statement, but I do object to counsel unwittingly breaking in on the answer when the witness is giving it.

The Witness: Or whether by the notation "Cancelled," I cannot say at this moment whether the destruction, the original destruction of the notes, was by cutting out all the signatures, or by the adding of this word "Concelled."

Q. And it is a fact, is it, that you don't know in whose handwriting that word "Cancelled" is?

A. My impression is, as it was before, but I am not sure—it is not my handwriting—no, that it was put on by somebody at the office of Hays, Kaufmann & Lindheim.

Q. At the time the notes were turned over to you?

A. My memory is that it was that. It may be a notation, but——

Mr. Powell: There is no use of your going on, Dr. Rumely. You have answered the question, Doctor.

Q. You have stated that the persons who were present were Mr. Kaufmann and either Mr. Hays or Mr. Lindheim?

A. Yes, sir, one of the partners, or there may have been both, I don't recall.

221 Q. Had you conferred with either Mr. Hays or Mr. Lindheim prior to that interview with respect to the surrendering of these notes?

Mr. Powell: Objected to. If the Commissioner please, we are now getting very far afield when it is recalled that, on direct examination, I did not even bring out that these notes had been cancelled and surrendered; and we have now arrived at the point in the cross-examination not only where that fact is brought out, but we are still going further, as to whether Dr. Rumely consulted about surrendering them, etc.

The Commissioner: I think you are going pretty far, Mr. Harper.

Mr. Harper: The notes that are cancelled, are marked cancelled, sir.

Mr. Powell: It is your own proof that brings that out.

Mr. Harper: If you will look at the Defendant's Exhibit I, you will observe that it is marked cancelled on the face of the note.

Mr. Powell: Will you concede that the word "cancelled" is valid?

Mr. Harper: Well, we are not trying a case in contract.

222 The word "Cancelled" has bearing on a note, and it seems to me, sir, we are entitled to all the surrounding circumstances as to what purports to be cancellation.

Mr. Powell: If the Commissioner please, we are now getting into what would be a very important part of the trial. The whole transaction, the whole difference between the Government and the defendant in this case turns really and largely upon the question of that transaction on September 14, 1917, the cancellation of these notes, and I must object on this proceeding in permitting the District Attorney to go so far afield—and I say this without offense—and conduct a fishing expedition into this important part of the evidence. It has nothing to do with this removal proceeding, and I do not think he ought to be permitted to do it. I was very careful in my direct examination not to bring out any evidence as to the fact that these notes were surrendered and discharged. There is not a line of it, and I did it for the reason that I did not wish to get into the merits of that transaction.

Mr. Harper: It seems to me, sir, that I might ask as to with whom he conferred. I am not asking as to the subject of the conference.

Mr. Powell: This is a very important part of the evidence

223 on trial, or will be, and I say again, if the Commissioner please, that I do not think the District Attorney should be permitted, on the ground of cross-examination, in this removal proceeding, to get the defendant's version of that important part of the transaction. We do not know what the Government's version is going to be, except generally, and I don't think he ought to be permitted to do it now. What conceivable bearing can it have as to

whether this defendant should be removed or not? No possible bearing on any issue.

The Commissioner: There is no question about the propriety of the questions in regard to the intent of the endorsement.

Mr. Powell: I did.

The Commissioner: No, I say there can be no question of propriety as to the intent of the endorsement and the time of the endorsements and by whom they were made. Now, as to whether the question as to what conference or conferences he had prior to that or with whom, I think the objection is well taken.

Mr. Harper: Well, sir, the notes were to be, as I understand Mr. Powell's theory, for the purpose of showing the indebtedness mentioned in the indictment, was identical with the indebtedness
224 covered by the notes, which was a question originally put to me, and concerning which I declined to make a concession and still do decline to make any concession, so that it is in issue before your Honor as to whether that indebtedness is actually covered by these notes or may exist apart from the notes.

It seems to me, sir, that counsel having put in evidence to that issue, I should be entitled to know everything about these notes, their issuance, and cancellation, and the circumstances leading up to their cancellation.

Mr. Powell: Your Honor, I think Mr. Harper has unwittingly misstated the purpose. The purpose of the introduction of the notes is simply and solely this, which I understand is the fact and which I hope to show by Mr. Harper, if necessary, that the indebtedness, the alleged indebtedness to the German Imperial Government, referred to in the Washington indictment, is the indebtedness represented or purported to be represented by these notes, and nothing else. In other words, the Grand Jury, in the District of Columbia, in making that charge, referred to the indebtedness represented by these notes, and that is the only purpose in introducing the notes, and none other.

225 There is no question but that is the fact and that is the only thing we are trying to prove here.

Mr. Harper: Well, counsel has raised the issue and that issue I dispute. The Government denies that the indebtedness is merged in these notes, which was practically counsel's contention.

Now, the——

Mr. Powell: That is not my contention. I beg your pardon.

The Commissioner: Well, I have allowed the question concerning the notes and concerning every endorsement upon them. But this is a different question.

Mr. Harper: I claim the question is competent, and for this reason: That it is the same as the indebtedness mentioned in these notes, and that issue being controverted by the Government, states that indebtedness had an existence apart from these notes. The Government is entitled to show all the circumstances which can be properly said to relate to the issue of these notes, or their purported cancellation.

Now, evidence has been admitted on the part of the defense which your Honor had some doubt about, and I am quite clear in my mind

that this is important evidence for the Government to have,
226 and I think we should be entitled to an equally favorable ruling.

It seems to me that it is clear that the issue being raised as to whether the money mentioned in the indictment is the same indebtedness as mentioned in the notes, we should be entitled to show what the facts are.

Mr. Powell: You do not state correctly our position, because there is no doubt at all that the Government in the Washington indictment is referring to an indebtedness represented, or purporting to be represented by these notes.

Now, the position of the defense is not that the indebtedness was merged in these notes; that it could not exist apart from these notes; I am not trying to preclude the Government on those questions at all; I am simply trying to show that the Grand Jury of the District of Columbia in charging that Dr. Rumely was indebted to the German Imperial Government, was referring to an alleged indebtedness which was represented or purported to be represented, at least in part, by these Sielcken notes, and I take it, as I understand it, that that fact should not be disputed; and I object to your trying to make me take the position or state my position erroneously.

Mr. Harper: I am merely trying to understand your po-
227 sition, Mr. Powell. If you are intending to show that these, that the indebtedness mentioned in the indictment was identical with the indebtedness mentioned in the notes, I take issue with you upon that point.

Mr. Powell: I am not trying to preclude the Government on that question at all, because that would be going into the merits of the case, and I have had no intention of, no intention all along, of going into it, as I have stated to you before, here, and I have been very careful in framing my questions not to do that very thing. I have been very careful not to go into it one way or the other.

The Commissioner: Mr. Powell, I don't understand that you are not going into the merits of the case. However, if that is so, what is the purpose of going on here before me then?

Mr. Powell: Well, if the Commissioner please, by the merits of the case I mean the question of whether the German Imperial Government did, in fact, advance these moneys or not.

The Government has made out by a certified copy of the Washington indictment, a prima facie case to that effect, and we have introduced no evidence to rebut that, and do not intend to.
228 Our position, and all the points we raise, both of law and fact, in this removal proceeding are based upon the assumption that, as made out by the Government a prima facie case, the German Imperial Government did advance the money. I am not trying to take issue on that point. To do so would require us to have an extended trial before your Honor, lasting weeks, and that I am not going to do.

Mr. Harper: I will withdraw the question, sir, and save the situation, if it can be saved that way.

Q. Will you state who was present, Dr. Rumely, at the time these notes were delivered to you, September 14, 1917, other than Mr. Kauffman, Mr. Hays and Mr. Lindheim?

A. Possibly a secretary. I don't know whether Mr. Orvis was there at that time; I do not know; I do not recall; I am conscious only of the partners, but there may have been a secretary in.

Q. Are you able to recall whether it was Mr. Lindheim or Mr. Hays that was there, in addition to Mr. Kaufmann, at the time these notes were signed back to you?

A. No. I stated before that it was one or the other, or both.

Q. What is your best recollection on that point?

A. I think both were present, but I am not sure.

Q. You stated in your direct examination that you had
229 acquired two hundred shares of the Mail & Express Company, being two hundred shares that were not delivered?

A. Yes.

Q. On June 1, 1915?

A. I did.

Q. Is that true?

A. That was true.

Q. How did it come about that those two hundred shares went to you instead of the S. S. McClure Newspaper Corporation?

A. The S. S. McClure Newspaper Corporation had distributed its assets, and I had purchased the balance by my note for one hundred thousand dollars, and among those assets there was a fund for the purchase of these notes, for the purchase of this stock.

Q. Just exactly what was it that you received for your note of $100,000?

A. I received $200,000 in notes of the Mail & Express Company.

Q. What date was that transaction consummated?

A. I think between November 12th and November 14th, 1917.

Q. Did you receive anything at that time except these notes of the Mail & Express Company?

A. Yes, the S. S. McClure Newspaper Corporation distrib-
230 uted its assets to its stockholders and as the sole stockholder I received the other assets.

Q. That is, you received all the assets of the Mail & Express Company?

A. No.

Q. I mean of the S. S. McClure Newspaper Corporation at that time?

A. Yes, sir, either by purchase or distribution.

Mr. Powell: All of them, the question is.

Q. Did you receive all of the assets of the S. S. McClure Newspaper Corporation?

A. After the deal was over, the S. S. McClure Newspaper Corporation still had my note of $100,000, which was one of its assets and which I did not receive.

Q. Was that the only asset of the S. S. McClure Newspaper Corporation which it had after that time?

A. Yes, sir, substantially.

Q. Did it have any other?

A. It had its name, if there is an asset in name; but it had no other tangible assets but my note.

Q. It had its good will; is that right? Is that what you mean?

A. There is a portion of good will that would go with the transfer of its assets, but the name of S. S. McClure Newspaper Corporation it retained.

231 Q. Then after November 12th, 1917, the S. S. McClure Newspaper Corporation had a name and your note for $100,000; is that correct?

A. Yes, sir.

Q. And after that the S. S. McClure Newspaper Corporation did not do any business of any kind, did it?

A. It discounted notes at the bank.

Q. In the manner you have described?

A. In the manner I have described, yes.

Q. In your direct examination?

A. Yes, sir; on these Liberty Bond transactions as well as the notes discounted by the Mail & Express.

Q. Where did it get the money to buy Liberty Bonds?

A. It borrowed it.

Q. From whom?

A. From the bank.

Q. Did it ever collect your note of $100,000?

A. The note is not yet due.

Q. When is that note due?

A. On January 1, 1920.

Q. So that the business done by the S. S. McClure Newspaper Corporation after November 12th, 1917, consisted in endorsing notes for the Mail & Express Company; is that right?

A. And buying Liberty Bonds and borrowing money to
232 pay for them.

Q. Has that money been paid back that was borrowed?

A. I think it has, yes, all; I know of no note of the S. S. McClure Newspaper Corporation that ever went to protest; I think every note was paid on the maturity date.

Mr. Powell: Well, are there any outstanding?

The Witness: No, I think not.

Q. Except for the purchase of these Liberty Bonds with funds borrowed from the bank, and except for the endorsing of notes of the Mail & Express Company, the S. S. McClure Newspaper Corporation has done no business since its assets were distributed, has it?

A. Is paying salary to its officers doing business?

Q. Well, where did it get the money to pay salary to its officers?

A. Since that date it may have had a small residual amount to pay past claims of the officers.

Q. That is, the payment of salaries previously earned?

A. Yes, sir, or currently earned in that period, or chain.

Q. Did anybody earn any salary from the S. S. McClure Newspaper Corporation after November 12th, 1917?

A. There may have been a small residual payment in winding up the——

233 Q. I am not speaking about payments; I am speaking about earnings. Did the S. S. McClure Newspaper Corporation have any salaried officers after November 12, 1917?

A. It may have had for the month of December, but not after that.

Q. Are you able to state positively that anybody earned a salary from the S. S. McClure Newspaper Corporation after November 12, 1917?

A. After November 12th?

Q. Yes, November 12th, 1917; are you able to state positively that any officer earned any salary after that?

A. Salaries were paid in November and December to Mr. Larke and myself.

Q. For services performed in November and December?

A. For services performed at that time, yes, or arrangements——

Q. I don't know whether you answer my question or not, or understand it. For services rendered during November and December?

A. About November, I am sure, and I think also about December.

Q. From what fund was that salary paid?

A. From the residual holdings.

Q. Bank account?

A. A small, well, income and disbursements are shown on

234 this sheet (indicating.)

Q. Well, take this item of salary to Mr. Larke, December, 1917, $410.00, paid on December 18th?

A. Yes.

Q. Was that for services rendered for what period?

A. You are asking me questions in respect to which I am at a great disadvantage. First, I was not a bookkeeper, and, second——

Q. Well, you have been testifying in regard to a sheet and I assume you are familiar with it?

A. I don't know the exact thing that is covered by that payment of $410.00 to Mr. Larke.

Q. So far as you know now, then, that might have been for services rendered six months prior to November 12, 1917?

A. I don't think so. I think the company—as far as I know, yes.

Q. What about that payment for services to Edward A. Rumely; when did you render those services for which you got $250.00?

A. I continued acting as an officer during that period.

Q. Yes, but during what period did you earn that $250?

A. I was an officer, managing officer of the company during the month of December.

Q. That is not my question, sir. My question is, during what period did you earn that $250?

235 A. December.

Q. Do you mean to testify now that you earned that $250.00 in December?

Mr. Powell: What is your question? What do you imply by "now"?

Q. Do you mean to testify that during the month of December you were paid, you earned that $250.00, or had you earned it previously, and were being paid for it?

The Commissioner: Dr. Rumely, was that the salary for your services rendered in the month of December, or was it your salary for services rendered in some previous month?

The Witness: My salary had been running on for $250.00 a month continually for a long period of time, and the last—so much each month—and the presumption is that the company never allocated each month's payment to each month's work; but that was the arrangement for a long period of time, and the presumption was that the salary was paid month by month as the services were rendered.

Q. What day was your pay day?

A. Sometimes the company was not in funds, and pay day came later, but pay day was usually in the early, was early in the succeeding months.

Q. Do you mean to testify now that that $250 was for
236 services rendered in December?

A. Yes, sir.

Q. Read the day or date you got it?

A. December 18th.

Q. Were you receiving on December 18th, moneys that you had rendered services for from December 1st to December 31st?

A. It might refer to the previous month.

Q. Does it not, as a matter of fact, refer to the previous month?

A. If I had the books, I could tell you positively.

Q. You don't know anything about it now?

A. I know it was salary paid for services rendered at that time, and it was the practice of the company to pay $250 a month.

Mr. Powell: Are you willing to try to get access to these books and give Mr. Harper the information?

The Witness: Yes, sir.

The Commissioner: Is that the last salary payment you received?

The Witness: From the S. S. McClure Newspaper Corporation, yes, sir. I never handled the salary payments, that is, they came to my secretary.

Mr. Harper: If the Commissioner please, I don't think this
237 burden should be put on the Government, and I move to have stricken from the record any testimony with regard to salary paid in December, inasmuch as the witness cannot testify precisely in regard to these matters.

Mr. Powell: If the Commissioner please, he has testified to the best if his recollection, to the best recollection he has, and the prima facie case he has given is that it did relate to December, and it is for the Government to rebut it. However, I am willing to state that, pending the next hearing, we will try to get across to these books and state the fact. If he finds it is for November, we will say so. As a tech-

nical matter, the burden is on you, and we have made out a prima facie case, Mr. Harper.

Mr. Harper: Yes, sir, a prima facie case, Mr. Powell, by producing this sheet and having me assume that it is regular. Now, it appears of record that there are two items at least on this sheet that the witness is unable to state concerning.

Mr. Powell: No, the witness has stated according to his best recollection that those two items, the item of salary, the item of his salary, represents salary for December, but he says he cannot state positively, but he believes it is, and has so testified. The mere fact that
238 he is not willing to testify to it positively, without qualification, does not destroy its probative effect or force.

Q. Did you draw your salary in advance?

A. Sometimes in the current month for the current month.

Mr. Powell: From the standpoint of the purpose of this evidence, it does not make but little difference whether the services, whether that was a payment for services in November or December, because the payment represented the transaction between him and the corporation, a doing of business which is trading within the meaning of the Trading With the Enemy Act, even though the services had been rendered four or five months back.

Q. You personally handled transactions with regard to those Liberty Bonds?

A. I made the original arrangement with the bank, and directed the treasurer to carry through the policy I had outlined.

Q. In the case of these notes that were endorsed by the McClure Corporation, was that endorsement in each case placed upon the note by you personally?

A. Yes, sir, my personal endorsement could be placed there only by me personally.

Q. After November 12, 1917, the S. S. McClure Newspaper
239 Corporation no longer held any stock of the Mail & Express Company?

A. After November 12th?

Q. Yes, 1917

A. It did not, no.

Q. And the transactions that occurred subsequent to that, subsequent to that date, consisted in the purchase of Liberty Bonds by you, purchase of Liberty Bonds by the S. S. McClure Newspaper Corporation, from moneys borrowed from the bank?

A. Yes, sir.

Q. And the repayment of those sums by employees of the Mail & Express Company?

A. Of the Mail & Express Company, yes.

Q. And in the endorsement of notes for the benefit of the Mail & Express Company?

A. In the endorsements by whom?

Q. Of you, of notes of the Mail & Express Company?

A. As an officer of one of the corporations, or personally?

Q. As an officer of the corporation?

A. Those notes that were endorsed as an officer, that was done in response to my decision.

Q. Well, did you personally endorse these notes that you have been telling Mr. Powell about?

240 A. For the Company.

Mr. Powell: Did you endorse them, or did you not?

Q. I am talking about your endorsement of the corporation. Were you the officer that put that endorsement on it?

A. I think I was the one who endorsed them on behalf of the S. S. McClure Newspaper Corporation.

Q. Now, except for that endorsement, except for the Liberty Bond transactions that have been described, except for these payments of items of salary the S. S. McClure Newspaper Corporation did no business after November 12, 1917, did it?

A. After November 12th?

Q. Yes.

A. No, sir.

Q. Did it have a bank account after that date?

A. I cannot tell; it must have had a bank account with these notes outstanding—yes, sure.

Q. Where was that bank account?

A. Either at the Atlantic National or the National Park Bank.

Q. And those funds were only used for the payments mentioned under this heading of disbursements, Defendant's Exhibit O?

Mr. Powell: For what period does your question relate to?

241 Mr. Harper: Subsequent to November 12, 1917.

Mr. Powell: *Being* Defendant's Exhibit O, in front of you, before you answer this question, so that you will know what period it relates to (indicating to witness).

Q. (Question read.)

A. I cannot say as to that without access to the books.

Q. Well, does this purport to be a correct statement of all the disbursements made by the S. S. McClure Newspaper Corporation after the first date mentioned on that sheet?

A. I take it to be a correct statement of disbursements, but I don't know whether it is a correct statement of all the disbursements.

Q. At least you don't know of any other transactions with the bank, other than the ones that are scheduled there under the heading of "Disbursements," do you?

Mr. Powell: For what period, please?

Mr. Harper: For the period covered by Exhibit O.

A. I have none in mind now, but not having the books, I should not rely upon my own impressions.

Q. You don't know of any other, do you?

A. I do not recall any other at this moment.

Q. Well, you are able to state positively that there were no other disbursements for the months of November and December, 1917, are you not?

242 A. No, I am not able to state that positively.

Q. I show you this report which is Government's Exhibit 2, n this proceeding, and I ask you where you got that form upon vhich that report is made (showing witness)?

A. I think from the office of Hays, Kaufmann & Lindheim.

Q. Had you yourself seen that form previously?

A. I think not, no.

Q. Had you seen forms of that kind previously?

A. No, I think not, no.

Q. Do you know who obtained the original of that form for you?

A. I think the office of Hays, Kaufmann & Lindheim.

Q. Do you know what individuals did?

A. I do not know.

Q. Have you ever been to the office of the Alien Property Custo- lian in Washington?

A. I have not, to my knowledge.

Q. Have you ever conferred with any representative of the Alien 'roperty Custodian in this City?

A. No, not when I knew it. I mean there may have been in this nvestigation somebody representing the Alien Property Custodian, nd I did not know it.

Q. When we were all at Mr. Becker's office, Mr. Garvan was there?

A. Yes.

243 Q. But aside from that had you ever conferred with Mr. Garvan?

A. No.

Q. Or with any other Alien Property Custodian representative in his City, as far as you know?

A. One or two, various men that came to the Mail during my onnection there, during that period; there was a man that came nce under the name of Vanderpoel, and then he appeared again nder another name, and he may have represented the Alien Prop- rty Custodian.

Mr. Harper: May it be conceded, sir, that Mr. Vanderpoel is an nvestigator of the Department of Justice?

Mr. Powell: Yes, sir.

Q. You testified that you had not obtained any license from the resident to trade either on behalf of yourself or on behalf of the . S. McClure Newspaper Corporation; is that correct?

A. I did.

Q. And you were asked whether the German Imperial Govern- ent obtained a license, and your answer, I believe, to that was that ou had no communication with them; do you remember that?

A. Yes, sir.

Q. When did you last have any communication with any

244 representatives of the German Government?

A. I don't know whether you would call the Commercial ttache a representative.

Q. You mean Dr. Albert?

A. Dr. Albert, yes.

Q. He was accredited to the State Department as a Commerc
Attache of the German Legation? I suppose he was.

Mr. Powell: When was he so accredited, Mr. Harper? That
important.

Mr. Harper: I cannot recall the exact date, Mr. Powell.

Q. When did you last see that individual?

A. Before America's entry into the war, by some six or eig
weeks.

Q. Have you communicated with him since that time?

A. I have not.

Q. In any way, shape or form?

A. In any way, shape or form.

Q. Have you communicated with any other representative of t
German Government since you communicated with Dr. Albert?

A. I have not, to my knowledge.

Q. How do you know whether the Imperial German Governme
obtained a license to trade?

245 A. I said not to my knowledge.

Mr. Harper: That is all.

Mr. Powell: If the Commissioner please, I think I have abo
four questions to ask, and then I can finish with the witness.

The Commissioner: Yes, go on.

Redirect examination.

By Mr. Powell:

Q. Mr. Harper asked you whether you had engaged Mr. Hog
of Washington, and you said you had. Have you ever seen M
Hogan?

A. I have not.

Q. Has your counsel ever seen him, as far as you know?

A. No.

Q. Have you paid Mr. Hogan anything?

A. I have not.

Q. Has your counsel paid him anything in your behalf?

A. He has not, no.

Q. Is he engaged generally in connection with your case do
there?

A. No, sir, just specifically in connection with preliminary wo

Q. In connection with what?

A. With the Washington indictment.

Q. You were asked whether the report which you made to t
Alien Property Custodian, and which was introduced in e
246 dence by the defense, as Defendant's Exhibit D, a photos
copy, introduced by the Government as Government's E
hibit 2, was on a regular printed form, and you said yes. Is I
fendant's Exhibit D, the printed form?

A. Is that the printed form?

Q. Is that the printed form you used in preparing your original report, as far as you now recall?
A. I think it is, yes.

Mr. Harper: It will be conceded that that is the same form.
Mr. Powell: All right.

Q. Now, you testified that between November 10th and 12th the S. S. McClure Newspaper Corporation distributed all its assets, except certain assets specified. To whom were those assets distributed?
A. To Edward A. Rumely.
Q. That is, to you?
A. To me personally.
Q. And you were then the sole stockholder?
A. Yes, sir, the sole stockholder, that is, with one or two shares needed to keep more than one stockholder.
Q. You were also asked on your cross-examination whether the S. S. McClure Newspaper Corporation held any stock in the Mail & Express Company, after November 12th, and your answer
247 was, no. Who did hold the stock?
A. I held the stock of the Mail & Express Company.
Q. After November 12th?
A. After November 12th.
Q. All of it?
A. All except two hundred shares, which I subsequently acquired.
Q. You were also asked——
A. There may have been a few shares which I issued in bonus payments that were out of my hands.
Q. But most of the stock you held?
A. But most of the stock I held, yes.
Q. You were also asked whether after November 12th the only business that the S. S. McClure Newspaper Corporation had was this Liberty Loan transaction, and the discount of notes for the Mail & Express Company, and you answered yes?
A. Yes, sir.
Q. You do not mean to imply by that, do you, that the corporation did not during the months of November and December *had* the other transactions with the Mail & Express Company to which you testified on direct examination?
A. Oh, no; nor the other transactions with me in November.
Q. As a matter of fact, even after December 1917, and in the early part of 1918, the S. S. McClure Newspaper Corporation continued, did it not, to have transactions with the Mail & Ex-
248 press Company?
A. It did, and with the banks.

Mr. Powell: That is all.

Recross-examination.

By Mr. Harper:

Q. Just one more question. You stated on your direct examination that certain bonds were deposited by you, I think, with the

National Park Bank, as collateral to the notes which the S. S. McClure Newspaper Corporation discounted there?

A. Yes, sir.

Q. Those bonds subsequently came to you?

A. Yes, sir.

Q. How did they come to you?

A. They came either by the distribution of the assets of the S. S. McClure Newspaper Corporation, or there may have been among them—and I am not able to ascertain that from my records at this time—some of the bonds that I personally acquired on October 1st, when the bonds matured. Some of the bondholders refused to renew, and some bonds were purchased by me.

Q. That is all?

A. And among those bonds there may have been those that I then purchased.

(Recess until 2:15 P. M.)

249 Afternoon Session.

(2:15 p. m.)

Mr. Powell: May it please the Commissioner, now the only thing we have left is a few questions that I want to ask Mr. Harper, and possibly some evidence as to the New York office.

There are one or two witnesses I have been trying to get, but I have not been able to get them, but maybe we could get the evidence from a witness that Mr. Harper has here.

If it is agreeable to your Honor for me to examine this witness or those witnesses Mr. Harper has here now, we will examine them.

The Commissioner: Well, I want to say one thing: the motion that Mr. Harper has made to strike out the testimony in regard to payments made by the McClure Company of salaries in the month of December, should be granted, unless you produce evidence as to what those payments were for, and the period they covered.

Now, you have a payment made to Dr. Rumely, I think, of December 18th.

Mr. Powell: Yes, sir.

The Commissioner: And on being questioned as to what
250 that payment related to, Dr. Rumely was unable to testify whether that was a payment in advance of services rendered in December, or whether it might not have been for services rendered as president of the corporation in the month of October. Now, that is a material issue, or I assume you would not have offered it in evidence.

Mr. Powell: Yes, sir.

The Commissioner: Then it is incomplete as it stands.

Mr. Powell: Well, our position on that, your Honor, is this——

The Commissioner: As it now appears, there was $250 paid Dr. Rumely on December 15th. What it was paid for, what it was for, whether it was a loan or a payment, depends upon evidence which is uncertain.

Mr. Powell: If your Honor please, I think there is no dispute as to whether it was a payment for services, but the only thing is whether it was for services for the month of December or the prior month.

The Commissioner: Then if that is the case, it is not before me for what payment that was made.

Mr. Powell: In the first place, we are going to ascertain that, and if it was for a prior month, prior to the month of December, and the book or books will show it, we will concede it, but our
251 present position is that, even though it was or it were for services rendered for a month prior to December, the evidence is, nevertheless, material, because it shows the doing of business or a trading within the Enemy Trading Act after December 27th, or, rather, after November 6th.

The Commissioner: It may be so, but it is not definite at all.

Mr. Powell: Will your Honor reserve——

The Commissioner: Oh, I am going to give you an opportunity to make that part of your evidence complete.

Mr. Powell: Thank you.

Mr. Parker: May it please the Commissioner, there are a number of witnesses here from the Alien Property Custodian's office. They are all at the disposal of Mr. Powell, if he wants to call them.

Mr. Powell: Are you going to call any?

Mr. Harper: Well, it depends on whether there is evidence to rebut.

Mr. Powell: I think we have made out a prima facie case, if the Commissioner please, to the effect that the Alien Property Custodian had an office on 42nd Street.

Mr. Harper: After May 1st, 1918.

252 Mr. Powell: After May 1st, 1918.

Mr. Harper: I think you have, too. Do you rest?

Mr. Powell: Well, on our main—well, are you going to put in any rebuttal evidence or not?

The Commissioner: Oh, that is hardly a fair question.

Mr. Powell: Well, we do not rest, because I am trying, as I told Mr. Harper—well, I have certain information which I wish to ascertain, whether it is correct, and, if it is correct, I want to prove it. I had a couple of leads this morning and I traced them up and found out that the witness that I thought I would use, did not have the knowledge that I wanted; and therefore I do not rest, because I do want to put that evidence in, as it is strongly important. We have used our best endeavors for the last three or four days to get that, and we worked yesterday trying to get it, that is, Sunday.

Mr. Harper: May I suggest that this argument with respect to giving an opportunity to put in evidence at some time in future be not included in the record at this time.

The Commissioner: Oh, yes. I think it should not be included in the record.

Mr. Powell: If your Honor please, the only answer I can
253 make to you is that we do not close our case now, and we expect to get some additional evidence, and we have made our best efforts to get it the last few days.

The Commissioner: My object in fixing the hearing for this hour was so that the case might be concluded.

Until you rest your case the Government is not required to proceed. These witnesses are now here upon the understanding that you were to close your case, Mr. Powell.

Mr. Powell: If your Honor please, let me be a little more concrete: we have definite information that the representatives of the Alien Property Custodian's office, did receive and accept reports of the nature in question in this jurisdiction, and that is a fact that we are trying to prove, and we are trying to get the men who filed their reports, and this morning I have the name of two of them who, I am informed, filed them. I cannot state to your Honor that they did, however, because I have not seen them. We have seen those two men, and they do tell us that they did file their reports in this jurisdiction, I will prove that fact, and I shall want to put them on the stand and prove it by them.

It is a very difficult kind of evidence to get, because of
254 the——

The Commissioner: Mr. Powell, what would it amount to if you did get it? That somebody as an agent of the Alien Property Custodian said or stated that he would accept that report, and with the reservation, possibly, in his own mind, that he would forward it to the Alien Property Custodian in Washington. Would it amount to any more than that?

Mr. Powell: I think it would, your Honor, and it would amount to this: The Government's case rests upon the proposition that the duty of the defendant to file this report arose in Washington and no place else.

Now, if it can be shown that this defendant could have filed his report in New York and it would not have been accepted, why, then, I do not see how it can be maintained that his duty was to file it in Washington and no place else, and for failing to file it in Washington and no place else, he has been guilty of a crime there.

My information is, your Honor, that there were thousands of reports which were filed later. Mr. Palmer, in his speech before the Bar Association the other day I think said that there were approximately twenty-five thousand reports filed, and more than
255 half were filed after December 20th, and also my information is—I do not state this to be a fact, because I have not legal proof of it yet—that a great mass of these reports were accepted in this jurisdiction.

Now, if that is so, I do not see how this can be maintained, that this defendant was under a duty to file his report in Washington, and that he could not have filed it any place else.

That is, in effect, the Government's position.

The Commissioner: It does not seem to me that you are getting anywhere with that argument, Mr. Powell.

If it was the duty to file in the office of the Alien Property Custodian and that office was located in Washington, what difference does it make, as far as you were concerned, whether other people filed reports, or had reports accepted by some agent here, and which afterwards reached Washington?

Mr. Powell: I think a very good test of it is this: If the Alien Property Custodian, irrespective of whatever private regulations they might have conducted their business under, so that they did accept reports here in this jurisdiction, then the defendant had a right to file them in this jurisdiction, just as anybody else did, and the fact that he failed to file them, therefore, in Washington, cannot
256 be made the basis of this crime.

The Government's position is, not merely that he might have filed in Washington, but that he had to have them filed in Washington, and in no other place, that he could not file them anywhere else.

Assuming that we could show at best, in order to bring the point at issue, that the New York office did receive, was authorized to receive, reports at Forty-second street, our point is, under those circumstances, that the Government would have failed in an essential part of its case in establishing the fact that the duty of the defendant to file his report arose in Washington and no place else.

The Commissioner: I don't see it at all. I might give a paper that I had to file in the Clerk's office, to one of the clerks I happened to meet on the street. Now, because I did not give him, and did not file it in the Clerk's office, had not availed myself of meeting a man on the street and gave it to him, would that absolve me of any default? This is a case of default to file.

Mr. Powell: I know, but the burden rests upon the Government to show that the duty arose in Washington and no place else.

257 The Commissioner: That is the offense named in the indictment.

Mr. Powell: Yes, sir.

The Commissioner: Now, it is up to you to show that that is not the case.

Mr. Powell: And suppose we should show, your Honor, that the New York office, to state my question again, which I do not think I made very clear to you,—suppose we should show that the New York office was, in fact, authorized by Mr. Palmer to accept reports so that Dr. Rumely might have filed it either in New York or Washington, is it not then clear that the Government has failed in establishing that the breach of duty arose in Washington, and no place else?

The Commissioner: Well, I shall not pass upon that question, because it has not arisen here, and is——

Mr. Powell: Pardon me, sir. Now, suppose that question should arise, we think that the same result is reached by saying that, irrespective of the directions, that the Alien Property Custodian may have given to his own subordinates in his department, the result is just the same as if, as a matter of fact, a number of reports were filed and were accepted here.

258 The Commissioner: I don't agree with you on that.

Mr. Harper: May I say, sir, that these witnesses are here, and they have had to wait now——

The Commissioner: Well, the names of the witnesses that are here I think should be——

Mr. Harper: The witnesses that are here are Mr. Munson, of the Bureau of Investigation of the Department of Justice, who, I believe, was the first man to conduct any activities here on behalf of the Alien Property Custodian; and there is Mr. Clayton, who is the present Chief Clerk of the office of Mr. Francis P. Garvan, and there is Mr. Kilborne, whom I think was the only man that was mentioned by name in the testimony that has so far been offered.

Now, these gentlemen are all familiar with the phases of the Alien Property Custodian's work with which they were concerned. They are here, and may be examined by the defense. If the defense rests, I may examine all or some of them, but I should not be required so to decide at this time; but I object, sir, to any adjournment. We had a long adjournment in the first place and counsel had plenty of time, plenty of opportunity to get whatever wit-
259 nesses they wanted. These men are here and can testify to all the facts which counsel can by any possibility get from anyone else, and I think he should be required to call them or somebody else, and rest.

Mr. Powell: I do not believe these gentlemen can testify to some of the facts I want to bring out. If I did think so, I would gladly call them; but the other witnesses that I wish to get are witnesses who have filed reports within the jurisdiction of this court, and gave them to the representatives of the Alien Property Custodian, and in certain instances at their request and at their instance, as I am informed.

Now, I do not believe these men can remember specific cases like that, if the Commissioner please.

Mr. Harper: I object to any adjournment.

The Commissioner: What do you mean by filing their reports?

Mr. Powell: Made out their reports, executed them, and acknowledged them, and handed them to some representative or representatives of the Alien Property Custodian in this jurisdiction. That is my information.

The Commissioner: Filing is a word which implies a particular place for filing.

As I understand your explanation now, that you would
260 expect to prove by these witnesses that they had taken their reports to the office on Forty-second street, and that they had been accepted there.

Mr. Powell: Or downtown.

The Commissioner: And out of town.

Mr. Powell: And possibly downtown.

The Commissioner: That they had been accepted there, yes, and with no reference to the necessity for their being filed in any other place.

Mr. Powell: Yes, sir.

The Commissioner: Well, how far would that go to do any more than to evince an accommodating spirit on the part of some agent of that department?

Mr. Powell: Well, because it would be evidence that, as the Alien

Property Custodian actually conducted his office, he did receive reports in New York.

The Commissioner: No, it would not be evidence as to that at all, to my mind, any more than if you handed it to your bank.

Mr. Powell: Well, how else would you prove it, your Honor, that the Alien Property Custodian——

The Commissioner: I don't know how you would prove that he had an office in any other place than Washington.

Mr. Powell: The vital fact is not whether he calls his suite
261 of rooms in Washington the office or not, but whether he received reports, and if we show that he did receive reports in this jurisdiction, why——

The Commissioner: Well, how would you prove that, except that he authorized someone in this jurisdiction to receive those reports?

Mr. Powell: Because it seems to us that the important fact is not the instructions that he gave to his subordinates, but the way or the manner in which he conducted his office.

The Commissioner: The important matter, it seems to me, is, whether there was anyone here in this district authorized to receive those reports. I might receive such a report, it might be brought in to me, to my office here, and I would say, yes, I will take this, or your bank might take it in the course of business.

Mr. Powell: The bank is a little different, because necessarily there it would be a matter of accommodation, but surely the effect of the representatives of the Alien Property Custodian receiving reports in this jurisdiction, the effect of that upon this defendant's case, I respectfully submit, cannot be overcome by merely showing that Mr. Palmer never specifically authorized them to do it.

262 The Commissioner: Well, I don't agree with you.

Mr. Powell: Well, if the Commissioner please, I have stated my case as clearly as I can.

Now, what is your Honor's ruling with regard to my going on?

The Commissioner: Well, if you have anything to go on with, yes. The only thing I have to say is, that I shall give you an opportunity to present any further testimony that you care to present, to make the details of that statement of receipts and expenditures———

Mr. Powell: Yes, sir.

The Commissioner: To coincide with the facts.

Mr. Powell: Yes, sir; and regarding the little additional evidence that I wish to get from Mr. Harper.

The Commissioner: Well, if you are to examine Mr. Harper as your own witness, then, of course, proceed with him.

Mr. Powell: What is your Honor's final ruling as regards our going ahead with this evidence as to the office of the Alien Property Custodian here?

The Commissioner: Why, proceed with it.

Mr. Powell: All right, sir. Mr. Clayton, is he here?

263 Mr. Harper: Yes.

Mr. Powell: Mr. Clayton, will you please take the stand.

ALFRED J. CLAYTON, a witness called on behalf of the Defendant, being first duly sworn, testified as follows:

Direct examination.

By Mr. Powell:

Q. Mr. Clayton, how did you happen to come here today?
A. Why, I was here yesterday—yes, yesterday, and was asked to come here today—I mean Saturday.
Q. At whose request were you asked?
A. Mr. Harper.
Q. You were not subpœnaed by the defendant?
A. No.
Q. Or asked by him or his counsel to come here?
A. No.
Q. Are you connected with the New York office of the Alien Property Custodian?
A. With the Bureau of Investigation.
Q. Where?
A. At No. 110 West 42nd street.
Q. That is an office of the Alien Property Custodian, in this City, is it?
A. It is an office of the Bureau of Investigation.
264 Q. The office of the Bureau of Investigation?
A. Part of it.
Q. Does it say so on the directory in the hall?
A. I don't know.
Q. You don't know?
A. No.
Q. Who is in charge of that office?
A. Mr. Garvan, Francis P. Garvan.
Q. Mr. Garvan?
A. Yes, sir.
Q. Do you remember when Mr. Garvan was appointed?
A. No.
Q. Well, have you any idea?
A. No. He was there when I came with the Bureau, in May.
Q. May?
A. Yes.
Q. 1918?
A. 1918.
Q. The Alien property—the office of which you speak comprises the entire fifth floor of that building, does it not, No. 110 West 42nd street, and also some rooms on the sixth floor?
A. The Bureau of Investigation has part of the floor and what is called the Bureau of Sales, has the other part, so that the two
265 bureaus occupy the whole floor together.
Q. Now, Mr. Garvan you say, is at the head of this New York office?
A. Yes, sir.
Q. Do you know how he is designated on the door of his room?

A. Yes, sir.
Q. How?
A. It says "Managing Director, Bureau of Investigation," I think.
Q. Are you sure?
A. I am not so sure; I don't know that I paid any special attention to it.
Q. Then you don't remember?
A. I have seen the words, "Managing Director," but I don't remember the rest of the words on the door.
Q. Now, then, you don't remember how the office is designated in the directory on the main floor?
A. No, I don't recall that.
Q. Do you know how the office is designated in the telephone book?
A. No, I do not.
Q. Would you mind getting it over there—there it is over there—(indicating telephone book on the desk in the Commissioner's room) and telling us?
266 A. (Witness consults telephone directory book.)

Mr. Harper: If your Honor please, I think I must object to this evidence as immaterial, incompetent and irrelevant, and hearsay; there is no proof as to who put the entry in the telephone book.
Mr. Powell: Without any offense to Mr. Clayton, I think Mr. Clayton is in the position of a hostile witness here, and he represents the Government and not the defendant, and he has been quite careful and has avoided to state that it is the New York office of the Alien Property Custodian.
The Commissioner: He may answer the question.
Mr. Powell: I take an exception to your Honor's ruling.

Q. Now, please, if you will, look at that telephone directory and refresh your recollection as to the question?
A. What is the question?
Q. As to how the office at 42nd street is referred to in the telephone book of the New York Telephone Company?

Mr. Harper: If the Commissioner please, I think I must press the objection to that question, what the New York Telephone Company has entered in its book, without any proof or authorization of the particular entry or entries, is not competent evidence to prove any fact.

267 Q. Well, did your office—has it got a telephone?
A. Yes, sir.
Q. And the telephone, is it listed in the New York Telephone book?
A. Well, this is the first time I have seen it, because I have not had occasion——
Q. Well, you can answer that, can you not?
A. Yes, sir.
Q. Did the New York Office give the telephone company information or directions for the listing of its telephone in the book?

Mr. Harper: If you know?
The Witness: I don't know.
Mr. Powell: Well, do you want me to call somebody from up there to prove that, Mr. Harper?
Mr. Harper: Call any witness you like.
Mr. Powell: All right.

Q. You don't know?
A. I don't know.
Q. But you do know that you have got a telephone?
A. Yes, sir, it was there when I came with the Bureau.
Q. Have you ever heard anybody in that office object to the manner in which the telephone company listed that office in the telephone directory?
A. No.
268 Q. You never have?
A. No.
Q. You came there in May?
A. Yes.
Q. And the telephone has been there ever since?
A. Yes, sir.
Q. Now, I repeat my question: After looking at that book, will you please refresh your recollection as to how the New York office of the Alien Property Custodian at 110 West 42nd street, is listed in the telephone book?

Mr. Harper: Objected to as calling for evidence calling for the contents of a written instrument, and as being incompetent, irrelevant and immaterial, and not binding on the United States.
The Commissioner: It does not seem to be competent at all, because it is no indication of the business carried on there; it is merely an indication of a name or title to be addressed there.
Mr. Powell: Then the objection is sustained, your Honor.
The Commissioner: The objection is sustained, yes.
Mr. Powell: Exception.

Q. Have you ever seen—who is the Alien Property Custodian, Mr. Clayton?
A. A. Mitchell Palmer.
269 Q. How long has he held that position?
A. I don't know.
Q. Any idea?
A. I could not give you the exact date.
Q. Well, since when, approximately since when?
A. I understand that he has been Custodian since the passage of the act.
Q. That is your best knowledge?
A. That is my understanding of it.
Q. Have you ever seen him?
A. Yes, sir.
Q. Personally?
A. Yes, sir.

Q. Did you ever see him at the office at No. 110 West 42nd street?
A. I have.
Q. How many times?
A. About three times.
Q. When, approximately?
A. Well, in May, shortly after I was appointed.
Q. May, 1918?
A. May, 1918; and once during the Summer—once during the Summer of 1918—and here about a week or ten days ago.

270 Q. Has Mr. Palmer, to your knowledge, been at the New York office on any other occasion than these three on which you have personally seen him?

A. Not to my knowledge; I have not seen — any other time.
Q. With whom did Mr. Palmer confer or whom did he see when he went to the New York office?
A. Why, I have usually seen him in the company of Mr. Garvan.
Q. Mr. Garvan?
A. Yes, sir.
Q. So that Mr. Garvan should be able to tell us the most of the occasions when Mr. Palmer was at the New York office?
A. Those were the only times I have seen him, and he has been with Mr. Garvan each time.
Q. Did you talk to Mr. Palmer when you saw him on those occasions about the business of the Alien Property Custodian?
A. I spoke to him on two of the occasions. The first occasion he was introduced to me and I think on the two other occasions I furnished him with his transportation, that is all.
Q. You did not talk to him about the business of the Alien Property Custodian's Office?
A. No, sir.
Q. So that your contact with him was purely social?
A. No.

271 Q. Well, you met him, and your buying him railroad tickets?

A. Well, the Government issues transportation to all officials, and I issued that transportation, and that was all.
Q. So that you are not competent to tell me what busines[illegible]r. Palmer was doing when he was there?

Mr. Harper: Objected to as calling for a conclusion, and as to the competency of the witness to testify.
Mr. Powell: The question is withdrawn then. Apparently we will have to get Mr. Garvan anyway.

Q. Is it correct, Mr. Clayton, that many thousands, several thousands, of reports required under the Trading with the Enemy Act, of enemy-owned property, and enemy-owned indebtedness, were filed late?
A. I don't know.
Q. You don't know?
A. No.

Q. Who are the principal members of the organization up there besides Mr. Garvan and yourself?

A. Why, in the Bureau of Investigation there is Judge Delehanty and——

Q. Well, I mean members—well, Judge Delehanty?

A. Yes.

Q. Is he up there?

272 A. Yes, sir.

Q. Regularly?

A. Well, very frequently.

Q. All right. And——

A. Then there are investigators. There is Mr. Shay.

Q. Is he there regularly?

A. Yes, sir. Mr. McAnerny, Mr. Ryan, Mr. Jansen, Mr. Keane and Mr. Tomlinson, Mr. Kenney, Mr. McKay and Mr. Page.

Q. Mr. Page?

A. Yes, sir. And there are a number of gentlemen in the Bureau of Sales. That is a different bureau.

Q. Yes. Now, I read you from page 6 of a report of the Alien Property Custodian, dated June 8, 1918:

"The office"—referring to the office of the Alien Property Custodian—"is divided into five bureaus, as follows, each in charge of a director"—then follows numerous bureaus: "Bureau of Administration; Bureau of Investigation; Bureau of Trusts; Bureau of Audits, and Bureau of Law."

After that the report goes on as follows:

"All of these bureaus are under the supervision of a managing director, Mr. J. Lionberger Davis, who, under the general direction of the Alien Property Custodian, is charged with the exec-

273 utive administration of the powers and duties of the Alien Property Custodian.

"In addition to and working in cooperation with the Washington office, there is maintained an office at No. 110 West 42nd street, New York City, which is in charge of a managing director, Mr. Francis P. Garvan, who is also the director of the Bureau of Investigation. At the New York office there are also representatives of the Bureau of Trusts (General Business Department, Mr. J. A. Bower, Manager), Bureau of Investigations (Mr. H. L. Gassin, Assistant Director), and Bureau of Law (Mr. Morgan M. Mann, Associate General Counsel)."

Is that statement correct as regards the time when it was written?

A. Some of the gentlemen whom you have mentioned there I have never seen, and they have never been in the office, to my knowledge; I have not met them personally.

Q. Yes?

A. There was a gentleman there, Mr. Gassin, who was Assistant Director, but he left a long time ago on account of illness.

Q. So far as you now recollect, the statement in that report of your superior, Mr. Palmer, is correct, is it not?

A. As far as I know.

274 Q. Do you maintain any kind of Bureau of Information up there for members of the public that are interested and

who are affected by the operation of the Trading With the Enemy Act?

A. We do not maintain a Bureau of Information but we have people coming in and inquiring from time to time about what to do.

Q. People come in there sometimes and ask for blank forms or reports?

A. Yes, sir.

Q. And you supply them?

A. If we have them.

Q. Yes?

A. Sometimes.

Q. If you have got them?

A. Very often we have not got them.

Q. And sometimes you have?

A. Yes, sir.

Q. And do they come to you with various questions as to how the report should be filled out, etc.?

A. Yes, sir, quite a number.

Q. And you answer them?

A. Yes, sir.

Q. I think you have told me that you have no knowledge as to the great number of reports being filed late; is that correct, or did I misunderstand you?

A. That is correct.

Q. One of the functions of the Bureau of Investigation is to examine whether reports are correct, is it not?

A. Yes.

Q. In connection with that investigation does the Bureau of Investigation examine the people who have made reports?

A. Yes, sir.

Q. Does it—I am referring to the Bureau now, at 42nd street, and so are you; is that correct?

A. Yes.

Q. Does it sometimes request supplemental reports or a revision or correction of reports that have been theretofore filed?

A. I have not heard of any cases of that kind.

Q. You have not heard of any cases like that?

A. No.

Q. What is the procedure in case a report is filed which is incomplete or unsatisfactory, and the Bureau of Investigation determines that fact, and in a case where it does not believe that the report is intentionally made false?

A. These investigations of reports are turned over to the individual examiners or investigators.

Q. Yes.

A. In the Department, and it is their custom to summon the people and conduct an examination for the purpose of finding out whether the report is correct in all respects.

Q. Where was that examination held?

A. That is at 42nd street; and then when the report is finished by

the investigator, it is turned in to Mr. Garvan and I think he forward it to Washington.

Q. The supplemental report?

A. The report made by the investigator.

Q. You say you have no knowledge of any supplemental report o revised report having been made by persons who originally made th report?

A. Not personally.

Q. You don't know of any such case?

A. No, I don't know of any such case.

Q. You would not deny that there have not been such cases?

A. No.

Mr. Powell: That is all.

Cross-examination.

By Mr. Harper:

Q. Mr. Clayton, do you know whether or not on October 6th, 191 there was a large amount of enemy-owned property in the vicinity o the City of New York?

A. Of my own personal knowledge, I do not.

277 Q. I mean through your familiarity with the customs an practice of the office, and reports that you have seen, an things of that sort, do you know whether there was a larg amount of enemy-owned property in the vicinity of New York?

Mr. Powell: Objected to. The witness states that he has no knowl edge.

The Commissioner: Objection sustained.

Q. Mr. Clayton, you stated that Mr. Garvan was a director of th Bureau of Investigation, and that he has an office in your suite, ha he?

A. Yes, sir.

Q. Is that the principal office in your suite?

A. Well, it is the principal office in the Bureau of investigation.

Mr. Powell: What do you mean by that, the largest room?

Q. Well, is it the largest room in your suite?

A. I would not say it was the largest room, but it is the bes located.

Mr. Powell: And that is what you mean by principal office?

The Witness: Yes, sir.

Q. The best located room?

A. Yes, sir, the best located room I should say.

278 Q. Are your duties confined to the Bureau of Investigation or have you also something to do with the Bureau of Sales?

A. I have charge of the clerical force in the Bureau o Sales, and supplies, and things of that kind.

Q. What are your duties in the Bureau of Investigation?

A. The same in the Bureau of Investigation, except that in the Bureau of Investigation I also have charge of the files.

Q. Now, are both of those offices on the same floor?

A. They are.

Q. Are they connected?

A. Yes, sir, practically all one; there is no subdivision on the floor.

Q. Is there any business done in those suites that does not pertain to either the Bureau of Sales or the Bureau of Investigation?

Mr. Powell: Objected to as incompetent, irrelevant and immaterial.

The Commissioner: He may answer, if he knows.

Mr. Powell: Exception.

A. Let me have that question again, please.

Q. (Question read.)

Mr. Powell: If the Commissioner please, I further object on
279 the ground—I would like to make my objection specific to that question, your Honor.

The Commissioner: All right.

Mr. Powell: I object to it as incompetent, irrelevant and immaterial; second, on the ground that the question is too general; and third, on the ground that the direct examination has shown the witness has no personal knowledge sufficient to answer the question; and fourth, on the ground that the question calls for a conclusion.

Mr. Harper: I think it is proper cross-examination, sir.

The Commissioner: I have instructed the witness to answer, if he knows, and with that qualification the objection is overruled.

Mr. Powell: Exception.

Q. What was the answer?

A. That is all the business I know of that is done on that floor.

Q. Are you there every day?

A. Yes, sir.

Q. What time in the morning do you get there?

A. About nine o'clock.

Q. What time do you leave?

A. About six, half past five to six, and on Saturdays at one o'clock.

280 Q. Have you been there continuously every day since you were appointed?

A. All except about four days.

Q. And are you in the course of your duties continually in and out both of the Bureau of Investigation and the Bureau of Sales?

A. Yes, sir.

Q. You say that during the time you have been connected with the office you have seen Mr. Palmer only three times?

A. That is all.

Q. Are you familiar with the printed forms that are submitted under Section 7 of the Trading With the Enemy Act?

A. Quite familiar.

Q. I show you Defendant's Exhibit D, which is on the A. P. form, 100, and ask you if you are familiar with that form (sho ing witness)?

A. Yes; I have used it quite often.

Q. And are you also familiar with the forms of reports that a required to be made by corporations?

A. Yes, sir.

Q. As to the list of stockholders, etc.?

A. Yes.

Q. Now have you in your office any file of reports of this cha acter, that is(reports under Section 7 of the Trading With t Enemy——

281 Mr. Powell: Wait one moment, please.

Mr. Harper: I have not finished my question yet.

Mr. Powell: I beg your pardon.

Q. Under Section 7 of the Trading With the Enemy Act, receiv from the public?

Mr. Powell: Just a moment.

Q. I mean received directly from the public.

Mr. Powell: I would like, before the witness answers, may it ple the Commissioner, that question, I would like to know what y mean by saying "his office"; do you mean the entire office at No. 1 West 42nd Street?

Mr. Harper: I mean anywhere on the premises at No. 110 W 42nd Street.

The Witness: Just read the question.

Q. (Question read.) That is, at the premises No. 110 West 42 Street.

Mr. Powell: Objected to as incompetent, irrelevant and imma rial, on the ground also that the witness has shown himself not have personal knowledge sufficient to answer the question in its pr ent form.

The Commissioner: Objection overruled.

Mr. Powell: Exception.

The Witness: No.

Q. Have you ever had any such file of such reports directly ceived from the public?

282 A. No.

Q. Have you at your office from time to time received ports of this character?

A. Occasionally one would come into the office by mail, or som body would leave it, and we would then send it down to the Was ington office.

Q. Have you any practice with respect to these reports when ceived by mail?

A. Our practice is to immediately send them to Washington, we get anything like that in the mail, original report; those were o instructions.

Mr. Powell: If the Commissioner please, I move to strike out that portion of the answer of the witness reading that those are our instructions, on the ground that it is not responsive.

Mr. Harper: I consent to that going out.

The Commissioner: All right.

Q. Did you yourself ever receive any such instructions? Have you yourself received any instructions on that subject?

A. Yes, sir.

Mr. Powell: Objected to as incompetent, irrelevant and immaterial. How can this defendant be bound by instructions from the Washington office to the New York office, as our position is that the question is not merely to be determined by the secret instruc-
283 tions or private instructions which Mr. Palmer may have given his subordinates; it is the manner in which the office in New York was, in fact, conducted.

The Commissioner: I think that has been clearly established, the practice that has prevailed, and however it may have originated, it seems to me to be immaterial.

Mr. Harper: Well, sir, may I not lay the foundation? I have not asked what the instructions were; but whether they were instructions on the subject, and I want to ask from whom and then ask what the instructions were.

The Commissioner: When any papers were received there by any subordinate, whether received by mail or left there, then the papers were forwarded to the Alien Property Custodian in Washington, and filed there; that the office on 42nd street had no files for the purpose of retaining those papers. That clearly appears on the record.

Mr. Harper: Well, sir, if that clearly appears, that is all right.

The Commissioner: It seems to me that clearly appears from the testimony already adduced.

Q. Were investigators of your Bureau there called upon from time to time to make investigations in connection with these re-
284 ports?

A. Yes, sir.

Q. And were reports, or copies of them, given to the investigators for that purpose?

A. Yes, sir.

Q. Where did those reports or copies come from?

A. The Washington office.

Q. And after the investigator had made his investigation what was the custom with respect to making a report, if any?

Mr. Powell: Objected to as incompetent, irrelevant and immaterial.

The Commissioner: How is that important, Mr. Harper?

Mr. Harper: I merely wish to show clearly and completely, if I can, what the function of this office was.

The Commissioner: Does it not already appear from Mr. McGuire's testimony that reports were sent to him, and investigated, and his

report was forwarded to Washington, to the Department, and nou of them remained in his file. That was brought out in Mr. Mc Guire's testimony, I am satisfied.

Mr. Harper: Of course, sir, that was brought out, and my onl thought was that this witness was in a little better position t
285 testify to it, that is all.

The Commissioner: Well, if you think it is material, I d not see why you should not ask it.

Q. What was the custom of his making an investigation of th report, if any?

Mr. Powell: Objected to on the same ground, if the Commissione please.

The Commissioner: Objection overruled.

Mr. Powell: Exception.

A. If the investigator found that, in his judgment, the report wa truthful, he put the copy of the report back in the file with a not to that effect. If he found that the report was not truthful from hi investigation, he made his report to Mr. Garvan, and, I understand Mr. Garvan sent that to Washington.

Mr. Powell: I move to strike that out, unless he knows.

The Commissioner: Yes, strike that out.

Q. What was the custom of the office?

A. Well, return it to Mr. Garvan.

Q. What was the custom with respect to reports returned to Mr Garvan?

Mr. Powell: Objected to on the ground that the witness has alread stated that he does not know.

The Commissioner: I don't think the witness is competen
286 to testify as to what Mr. Garvan did with the report.

Q. For the purpose of these investigations, of these reports, wer you sent originals or copies?

A. Copies.

Q. What was the business of the Bureau of Sales?

A. It was the duty of the Bureau of Sales to prepare enemy-owne property for the market, and sell it, advertise it and sell it.

Q. For the purpose of the operations of that bureau, is any refe ence had to these reports under Section 7 of the Trading With th Enemy Act?

A. No. I understand the Bureau of Sales gets its instruction from the Sales Committee in Washington. That is the custom.

Mr. Powell: I move to strike out the answer as not responsive.

The Commissioner: Yes, strike it out.

The Witness: Let me have that question again, and I will try an answer it.

The Commissioner: We don't want your understanding. You ar

called upon to testify here in regard to facts, according to your own knowledge, and not upon your understanding of the situation.

The Witness: What is the question?

287 Mr. Powell: Read the question.

The Commissioner: Yes, read the question.

Q. (Question read.)

A. I don't know.

Q. I think you have already testified that no file of those reports was kept in that Bureau, haven't you?

The Commissioner: Yes, sir, he did.

A. Yes, sir.

Q. Have you the same desk or have you the same office boy for both bureaus as you come into the office?

A. Yes, sir.

Q. So that if any mail is delivered, for either Bureau, it is delivered at the one desk?

A. Yes, sir.

Q. And if any persons come in, they come into the one desk?

A. Yes, sir.

Q. Public?

A. Yes, sir.

Mr. Harper: That is all.

Redirect examination.

By Mr. Powell:

Q. Mr. Clayton, did I understand that you said that reports were sometimes filed directly by the public at the New York office, either by handing them in there, or by mailing them, and that those reports were sent by the New York office down to Washington?

288 Mr. Harper: Just a moment. I object to the incorporation into the question that reports were filed.

Mr. Powell: All right, I will withdraw the question.

Q. That reports were handed in to the New York office, sometimes, and sometimes mailed to the New York office, and when the New York office received those reports they would then send them to Washington?

A. Yes.

Q. And I further understood you to say that was pursuant to instructions you had received from Washington?

A. No.

The Commissioner: Mr. Powell, that question was objected to when Mr. Harper asked it, and I sustained your objection.

Mr. Powell: I thought, Mr. Commissioner—well, sir, I did not mean to transgress there. I thought you sustained the objection as to reports made by the investigators.

The Commissioner: No.
Mr. Powell: Very well, sir. I am sorry I did not realize th
I will withdraw the question.

Q. In those cases where reports were handed to the New Yo
office or sent there by mail, was any protest made by an
289 body—the reports I understand were not handed back to t
persons who sent them there, but retained, is that corre
A. I usually mailed the report to Washington when it came to
by mail and simultaneously wrote a letter to the person making t
report that I had forwarded the report to Washington, and that th
was the proper place for it to be filed.

Mr. Powell: I move to strike the latter half of that answer o
as not responsive.
Mr. Harper: May we have the question.
The Commissioner: Yes, read the question.

Q. Question read.

Mr. Powell: I withdraw the question, your Honor.
The Commissioner: All right.

Q. I understand you to say that was done in certain cases, or w
that always done? I understood you to say in certain cases, is th
right?
A. That was my custom.
Q. To do that?
A. Yes, sir.
Q. But you did not return the reports?

The Commissioner: To the persons sending them?
The Witness: No, no.
The Commissioner: Now you have not answered the qu
290 tion in regard to the reports that were delivered to yo
office. You have answered the question as far as the repo
received by mail. Now, what was your practice in regard to repo
that were delivered to you?
The Witness: I forwarded those to the Washington office by ma
The Commissioner: And the rest of the question was, was a
protest made by you as to their delivery to you?
The Witness: If anyone walked in to deliver a report to me,
would decline to receive it, but sometimes reports would be left
the office, given to some clerk in the office, who would bring it
the Chief Clerk—myself—and I would forward it to Washingto

Q. And in cases where you declined to receive it, or where t
report was handed to you personally?
A. Exactly.

Mr. Powell: That is all.

By Mr. Harper:

Q. Mr. Clayton, when you received these reports either by mail or hand, to what extent did you examine them?

Mr. Powell: Objected to as incompetent, immaterial and irrelevant.

291 The Commissioner: You may answer.

Mr. Powell: Exception.

A. Just looked at them to see if they were original reports and properly executed, signed and sworn to.

Q. And if so, you immediately forwarded them to Washington?

A. Sent them to Washington.

Q. Are the representatives of the Bureau of Investigation in any other place than New York City?

A. I don't know of my own personal knowledge outside of Washington. There is a published list of representatives in each State which I have seen.

Q. And are there representatives of the Bureau of Sales in any other place than New York City?

A. Not to my knowledge.

Q. Was it the custom of the office that all matters that were handed to the boy over the desk from the public, should be brought to you?

A. Yes.

Q. And was it the custom that all mail should be brought to you?

A. Yes, sir.

Mr. Harper: That is all.

By Mr. Powell:

Q. You stated that you would receive these reports and
292 you would look at them and see whether they were properly executed and acknowledged?

A. Yes.

Q. Is that correct, or apparently so?

A. Apparently so, yes, sir.

Q. Would you also look at the various subdivisions where answers were to be given and see whether the various answers had been given one way or the other?

A. No.

Q. You would simply look at the end to see the signature, the acknowledgment, and see whether that was apparently correct?

A. I looked at it to see if, whether it was an original.

Q. Suppose you found it was not apparently an original, what would you do?

A. If it was a copy, such as received from the Washington office——

Q. No, my question is limited, Mr. Clayton, solely to reports handed in directly by the public or mailed directly by the public to your office on 42nd street?

A. What was that question, please?

Q. If you found that the report was not apparently executed i
proper form, what would you do?

A. There were few cases of that kind, and I mailed them back t
the people form whom them came, with instructions to hav
293 them properly filled out and filed in the Washington office.

Q. With instructions to what?

A. To file it in the Washington office, or mail it to the Wash
ington office.

Q. Mail it to the Washington office, after having it properl
filled out?

A. Yes, sir.

Q. Have you got a copy of any notice like that?

A. There is a copy in the files.

Q. There is?

A. Yes. All our letters are copied.

Q. Will you make an investigation of those cases and let me s
those letters that you speak of, produce them?

A. It would be very difficult for me to find a particular lette
because they are filed according to name, according to the name
the party, and I have no way of knowing that now.

Q. Well, I will have to do one of two things: I will either have
ask you, however difficult it may be, to produce those letters,
move to strike your answer out, on the ground that it is giving th
contents of a written instrument.

Mr. Harper: Well, sir, we are getting a little upside dow
here.

294 Mr. Powell: This is not my witness. In order to be poli
to his Honor, he is forced on me.

Mr. Harper: I have no objection to the witness being instructe
by you, sir, if you think it is proper for him to make a search
his files at the adjourned date, to produce such of those letters, if h
is able to find them.

The Commissioner: I will ask the witness to do that.

Q. Have you any means of doing that quickly?

A. No. You see, our letters are filed in alphabetical indices—ar
alphabetically—and unless I happen to know the name of the pers
or persons, it would mean going through thousands and thousan
of letters, starting from A and going to Z.

Q. It would take four or five weeks, would it not?

A. Or more.

Mr. Harper: I don't think, if the Commissioner please, simp
because there is a possibility of counsel getting evidence, that a hea
ing of this character should be deferred indefinitely while a man
commanded to do an impossible thing. It seems to me that if th
search were such a rigorous one as to make it practically impossib
to discover the document, we are in about the same situati
295 as we would be if the document was lost and to make the tes
mony as to its contents competent if it were offered by m
Now, the answer having been elicited by counsel for the defen

and the circumstances being such as the witness has described them, it seems to me that the answer should stand.

The Commissioner: I have gone as far as I can in asking the witness to produce the letter, if he can do so within a reasonable time, but the witness is a witness for the defendant, and the question is presented by counsel for the defendant and answered. He may be called a hostile witness, but, at the same time, he is testifying in regard to a course of procedure in his office. It seems to me to have considerable bearing on the case.

Mr. Powell: I want to get at the facts, your Honor, whatever they may be. I only have grave doubts as to the number of those cases. I think probably the chances are——

Mr. Harper: I take it, sir, that there will have to be an adjournment. I take it that we shall not get all finished today. There will have to be an adjournment for the purpose of argument anyway.

The Commissioner: Yes.

Mr. Harper: I see no objection to your Honor giving in-
296 structions to the witness to do what he can, but I don't think the witness should be put in the position or in a position of contempt if he comes back and says he is unable to discover anything.

The Commissioner: No. What you want, Mr. Powell, is something to corroborate the testimony of this witness.

Mr. Powell: I am frank to say if he produces only one——

The Commissioner: He says there is only one or two, I think a few.

Mr. Powell: The Commissioner has instructed you then to do the best you can on that.

The Witness: Yes.

The Commissioner: Are you through with this witness?

Mr. Harper: Yes.

Mr. Powell: I am through with him.

The Commissioner: Have you any other witness?

Mr. Powell: I don't think Mr. Harper has anybody else here that I want. If Mr. Harper will ascertain from Mr. Garvan the approximate times that Mr. Palmer came to New York, and consulted with Mr. Garvan regarding the Alien Property Custodian's business, with the approximate time that he spent here on each trip
297 from the passage of the Alien Property Custodian Act down to date——

Mr. Harper: Just a moment. I will interrupt you there. Mr. Garvan has only been connected with the Government since June 1, 1918, and I understand——

Mr. Powell: Then of course he cannot give you any date before that. I am speaking about Mr. Garvan's own personal consultations with Mr. Palmer. I am not asking Mr.——

Mr. Harper: That is, you want to know how many times Mr. Garvan conferred with Mr. Palmer at No. 110 West 42nd street, from June 1, 1918, to when, to date?

Mr. Powell: Yes, sir, and not only at 42nd street, but any other place in the jurisdiction of this Court. You say Mr. Garvan was

appointed June 1, 1918. Well, I suggest that information be obtained in that way——

Mr. Harper: Wait a minute. I am wrong about that.

Mr. Powell: Well, since Mr. Garvan's appointment, I suggest that the information be received in that way, which will render it unnecessary to call Mr. Garvan just for that purpose.

Mr. Harper: Do you rest?

Mr. Powell: You go on with your case.

298 HAROLD HARPER, a witness called on behalf of the Defendant, being first duly sworn, testified as follows:

Direct examination.

By Mr. Powell:

Q. Mr. Harper, you are in charge—you are an Assistant United States District Attorney in this District?

A. I am Assistant United States Attorney, with official residence at New York.

Q. You are starting to be technical very soon. You are in charge of this removal proceeding at bar on behalf of the Government?

A. I am in charge of this proceeding under the United States Attorney for this District.

Q. On November 16th, 1918, were you served with an affidavit and notice of motion for appointment of a commission to examine witnesses in Switzerland, in the case of the United States vs. Rumely, and the United States vs. Rumely and Kauffmann, represented by the two indictments, Defendant's Exhibits A and B for identification?

Mr. Harper: I object to the question as being incompetent, irrelevant and immaterial, relating entirely to another case, that has nothing to do with this case.

The Commissioner: Objection sustained.

299 Mr. Powell: Exception. Well, sir, now there are a number of questions, and the most of my questions of Mr. Harper are more or less bound up with these two indictments, and I think before going further with his examination I shall address myself to your Honor on that question. That requires an analysis of those items and he has got only nine minutes now, and I suggest that it be deferred until the next hearing. I hate to stop right in the middle of my analysis.

Our contention is as to their admissibility in this case, and which I have not yet argued at length.

The Commissioner: I have ruled on the admissibility of those items.

Mr. Powell: Yes, if your Honor please, but I stated at the time that I would like to discuss that when we came to take up the matter of the law, and I have purposely avoided making any extended argument on that. I know your Honor—well, if your Honor please, I have not yet presented to you our views on that, or made any analysis on these items, and our position is that whatever may be the case,

whether the crimes are different, that the rule to be applied in this case should be substantially the same as the rule to be applied in case the Washington indictment and the New York indictments did charge identical crimes.

300 The Commissioner: When the indictments were first presented, that is, at page 25 of the record, the objection was made and I there stated that I had not examined the indictment but that I should admit the document at present; and that was done for the purpose of saving time.

Mr. Powell: Yes, sir.

The Commissioner: Now, after a very considerable period——

Mr. Powell: I think it is page 36, your Honor, about that. At page, at the top of page 34, Mr. Commissioner, and at the top of page 33, it begins I started to ask a question there in regard to expense and then you told me that you had excluded it, but the record does not show any formal motion was made to that effect.

Mr. Harper: Pardon me, Mr. Powell. You don't want, do you, Mr. Munson, at all, do you?

Mr. Powell: No, sir. Thank you.

The Commissioner: Now, at the bottom of page 33, of the record, I asked the question, Are these indictments to the same effect as the indictment on which the removal is sought.

301 Mr. Powell: Yes, sir; and I was going to make my argument there, your Honor, and you interrupted me and you said that you had already——

The Commissioner: And I say there that I shall refuse to admit it, and sustained the objection of the District Attorney. Now, when I did admit it, it was with the reservation and statement that I made at the time that I did not or had not examined it.

Now, at page 34 of the record, I made a direct ruling, as follows:

"If both indictments are for different offenses, or a different phase of the same offense, that is, the commission of perjury in connection with rendering a report, or rendering a false report, in other words, I should refuse to admit them as evidence."

Now, that is clearly a rejection of the two indictments that were offered.

Mr. Powell: Yes, your Honor, but I thought you were going to give me an opportunity to ask you to reconsider that question because I had not argued it with you at length. I had no opportunity to argue them there. You shut me right off.

The Commissioner: Well, I do not think I care to hear you on that, Mr. Powell.

Mr. Powell: Well, there is nothing I can say to that, but I hope your Honor has studied these indictments. It is a very, very

302 remarkable situation that while they do not charge identically the same crime, it is the finest kind of variation.

The Commissioner: I don't see it. There is only one place for the commission of perjury and that is the place where the affidavit was taken. Failure to file a report is an entirely different proposition. The Court would have jurisdiction of perjury in connection with the report here. There is no question about that. And in no other place, if the charge is perjury.

Mr. Powell: If you don't want to hear me, I cannot say anything, but I do wish you would give me four or five minutes to discuss that at the beginning of this hearing, because I feel that this indictment should be in evidence on this question of jurisdiction, and also on two other questions involving law points.

The Commissioner: Well, in view of what has been said now, what further testimony do you intend to offer?

Mr. Powell: I think I can best ask Mr. Harper six or seven more questions and have the objection made to them, and your Honor's ruling, then the record will be in proper shape.

The Commissioner: Very well. Proceed.

Q. Mr. Harper, was the motion for the appointment of a
303 commission to examine witnesses in Switzerland argued in the United States District Court for the Southern District of New York, on November 29, 1918?

Mr. Harper: Objected to as incompetent, irrelevant and immaterial.

The Commissioner: Objection sustained.

Mr. Powell: Exception.

Q. Did you on behalf of the Government, oppose this motion?

Mr. Harper: I make the same objection on the same grounds, if the Commissioner please.

The Commissioner: Objection sustained.

Mr. Powell: Exception.

Q. Did you ask for a postponement of the motion on the ground that the indictment in Washington, that the indictments in Washington, involving the same transaction and substantially the same issues, were about to be handed down by the Grand Jury in the Supreme Court of the District of Columbia; that in the Washington proceedings the defendant would undoubtedly ask for a similar commission to examine the same witnesses in Switzerland; that the Government proposed to try the Washington proceedings before the New York indictment; that the Washington proceedings would thus become the major proceedings; and that therefore the Washing-
304 ton Court was the proper Court to try the question of whether the commission should be granted, and hence that the New York Court should postpone the argument on the motion?

Mr. Harper: I make the same objection on the same grounds, if your Honor please.

The Commissioner: The same ruling.

Mr. Powell: Exception.

Q. Did Judge Augustus N. Hand overrule this contention and say that he would hear the motion?

Mr. Harper: I make the same objection on the same grounds, if the Commissioner please.

The Commissioner: The same ruling.

Mr. Powell: Exception.

Q. At the close of argument did Judge Hand announce his decision in favor of granting the motion?

Mr. Harper: I make the same objection on the same grounds, if the Commissioner please.

The Commissioner: The same ruling.

Mr. Powell: Exception.

Q. On December 5, 1918, did Judge Hand sign an order for the issuance of a commission of which Defendant's Exhibit C is a copy?

Mr. Harper: I make the same objection on the same grounds, may it please the Commissioner.

The Commissioner: The same ruling.

305 Mr. Powell: Exception.

Q. Is it still the intention of the Government to try the Washington indictment first?

A. Yes.

Q. Has the Government made any motion, or taken any other steps to quash or nolle prosse the New York indictments of which Defendant's Exhibits A and B are copies?

Mr. Harper: If the Commissioner please, I object to it as incompetent, irrelevant and immaterial.

The Commissioner: Objection sustained.

Mr. Powell: Exception.

Q. Mr. Harper, you were in charge of the Grand Jury proceedings in New York which resulted in the indictments of which Defendant's Exhibits A and B for identification are copies, were you not?

A. Yes.

Q. You were also in charge of the Grand Jury proceedings in the District of Columbia, which resulted in the indictment of which Government's Exhibit 1 is a copy? Were you not?

A. I was under the United States Attorney for the District of Columbia.

Q. Is the capital stock of the S. S. McClure Newspaper Corporation referred to in the second count of Defendant's Exhibit B for identification, the same as the capital stock referred to in the first count of Government's Exhibit 1?

306 Mr. Harper: Objected to as incompetent, irrelevant and immaterial.

The Commissioner: Objection sustained.

Mr. Powell: Exception.

Q. Is the capital stock of the S. S. McClure Newspaper Corporation referred to in the first count of Defendant's Exhibit A for identification, the same as the capital stock referred to in the first count of Government's Exhibit 1?

Mr. Harper: Objected to on the same grounds, may it please the Commissioner.

The Commissioner: Objection sustained.
Mr. Powell: Exception.

Q. Is the indebtedness of $1,451,700, referred to in the Washing
:on indictment, introduced in evidence in Government's Exhibit 1
the indebtedness purported to be represented by the notes that hav
been introduced in evidence as Defendant's Exhibit- H, I, J, and K
respectively?

Mr. Harper: I object to that as incompetent, irrelevant and imma
terial, if the Commissioner please, particularly upon the ground tha
I am not competent to state what the Grand Jury intended by any
document that they have uttered.
The Commissioner: I think that on the ground of incompetency
the objection is well taken. I think you have got to qualify you
witness.
307 Mr. Powell: All right, sir.

Q. You stated that you were in charge of the Grand Jury pro
ceedings in the District of Columbia, under the United States At
torney for that District?
A. Yes, sir.
Q. Did you present the, did you have charge of the witnesses, di
you present all the evidence before the Grand Jury which resulte
in the indictment, Government's Exhibit 1?
A. I did.
Q. Did you present the document, any documentary evidenc
that may have been presented to the Grand Jury as part of tho
proceedings?

Mr. Harper: Objected to as incompetent, irrelevant and imm
terial, and upon that ground, that the proceedings of the Gran
Jury are secret.
Mr. Powell: If your Honor please, I thought I would be met wit
that objection, and that is why I did not ask these questions in th
first place.
The Commissioner: Objection sustained.
Mr. Powell: Exception.

Q. Did you have anything to do with the drafting of the indic
ment, Government's Exhibit 1?

Mr. Harper: Objected to as incompetent, irrelevant and imm
terial.
308 Mr. Powell: I am qualifying him, your Honor, now, as
whether he is competent to testify as to what the Grand Ju
referred to. I do not know of any better man than he is, to tell u
Mr. Harper: May it please the Commissioner, my objection is th
the drafting of the document before it is presented to the Gra
Jury does not make me competent to testify as — the meaning or i
tent of that document; that must be gathered from a constructi
of the document itself.
The Commissioner: I will sustain the objection.

Mr. Powell: Exception.

I assume, if your Honor please, that the Government has a construction of its own as to what that indictment refers to by mentioning that indebtedness of the German Imperial Government, has it not?

Mr. Harper: Well, the Government is a corporation sovereign, and, therefore, I think it is incapable of forming any intention or construction.

Q. You, as District Attorney, in charge of this removal proceeding, have a construction, have you not, in fact you have urged upon this Commissioner various constructions?

A. I think I know what the document means.

Q. All right. So far as your present construction goes and
309 without attempting to bind the Government not to claim a different construction at some future time, because I am not trying to do anything of that sort, does the indebtedness to the German Imperial Government—is the indebtedness to the German Imperial Government, referred to in the Washington indictment, Government's Exhibit 1, as you construe it, the indebtedness purported to be represented by the four notes introduced in evidence as Defendant's Exhibits G, H, J and K?

Mr. Harper: If the Commissioner please, I object to it as incompetent, irrelevant and immaterial. There can be nothing more immaterial, sir, than what my opinion is as to what the indictment describes.

The Commissioner: Objection sustained.

Mr. Powell: Exception.

The Commissioner: Just let the record show that an exception is granted Mr. Powell to each and every one of the questions addressed to Mr. Harper, and which I have disallowed.

Mr. Powell: I have just one more question, and then I am through, Mr. Commissioner.

Q. Is the capital stock of the S. S. McClure Newspaper Corporation referred to in the first count of the Washington indictment, Government's Exhibit 1, the capital stock of that corporation which was pledged under the four notes, Defendant's Exhibits G, H, I and K?

310 Mr. Harper: Objected to as incompetent, irrelevant and immaterial.

The Commissioner: The same ruling.

Mr. Powell: Exception. That is all, if the Commissioner please.

Mr. Harper: No cross-examination.

The Commissioner: Now then, for what purpose do you wish an adjournment?

Mr. Powell: If the Commissioner please, simply for the purpose of producing additional evidence that the reports to the Alien Property Custodian required by this Trading With the Enemy Act, were received without protest by the representatives of the Alien Property Custodian in New York City.

The Commissioner: Well, does not the evidence as presented, sh there were many instances where reports were received in the 42 street office and then forwarded to Washington? That is my rec lection of it, and very distinctly, and were received both by mail a actually delivered.

Mr. Powell: Yes, sir.

The Commissioner: Now, what further evidence do you wish produce in regard to that?

Mr. Powell: If I can, and if it is the truth, that repo
311 were received in this jurisdiction prior to December 20 1917, and prior to June 1st, 1918.

Now, if that is the fact, Mr. Commissioner, it won't take long present that evidence, and ten minutes ought to do it.

The Commissioner: If you have it.

Mr. Powell: If it is not ready by the next hearing, sir——

The Commissioner: Mr. Powell, I am going to give you, after yo case is closed, an opportunity to analyze all testimony which has be presented and to present a brief on the questions of law as they m occur to you—ample opportunity—but the actual hearing of the e dence should be terminated promptly, and unless you have son thing to produce at the next hearing, why, I think you might called upon to close the hearing.

Mr. Powell: I think that is entirely reasonable your Honor?

The Commissioner: Very well. Now, what time shall we fix for t next hearing. Wednesday, of course, is a holiday—Christmas Day and——

Mr. Powell: Very well. How about a week from today, Mr. Co missioner?

The Commissioner: That won't suit me at all. That won't s Mr. Harper nor I, either.

312 Mr. Harper: Well, I think as far as I am concerned, if t Commissioner please, the adjournment will have to go a further than that.

The Commissioner: I would rather it go off further, so that th can be no question of Mr. Clayton's having had an opportunity look up that letter, if he can find it.

Mr. Harper: I assume, sir, that the argument—well, the arg ment could take place at the next session, or is there to be an inter for——

The Commissioner: Well, there will be an interval for prepa tion of a brief. I assume Mr. Powell will want some little time present a brief on the law, and I think I have the facts pretty w in my mind, yet it is an involved proceeding, and I do not rea appreciate the relevancy or materiality of a lot of evidence that h been presented here. Now, Mr. Powell will want time to expl those last figures on that list.

Mr. Powell: Yes, sir.

The Commissioner: That list of disbursements and receipts wh you moved to strike out.

Mr. Harper: Yes.

The Commissioner: That will have to go until the next
313 hearing; and then Mr. Clayton is going to look for these letters and, it seems to me, that the next hearing for that purpose may be fixed at an earlier date, and then I shall give you a reasonable time to present your argument.

Mr. Powell: Do you want oral argument before the submission of briefs, or at the same time?

The Commissioner: No, I shall want your briefs and then will take them and examine them.

Mr. Powell: When shall we have oral argument in relation to the examination of briefs?

The Commissioner: Do you need oral argument?

Mr. Powell: I would like to, very much, your Honor, because there are some questions we have not threshed out here, and I would like very much, if your Honor is going to disagree with me, to have you say so, and give me an opportunity to meet your viewpoint.

The Commissioner: Well, on this question of indictments, I will hear you, but I am so satisfied in my own mind that my ruling is correct, that you will have to show me—I am from Missouri.

Mr. Powell: All I am asking you now is to let me be from Missouri, too.

The Commissioner: All right.

Mr. Harper: What date do you suggest?

314 Mr. Powell: I would suggest a week from tomorrow. For what?

Mr. Harper: For the next session.

Mr. Powell: Well, a week from tomorrow will suit me.

Mr. Harper: If the Commissioner please, before we adjourn I would like to call Mr. Kilborne.

The Commissioner: Very well.

HORACE O. KILBOURN, a witness called on behalf of the Government in rebuttal, being first duly sworn, testified as follows:

Direct examination.

By Mr. Harper:

Q. Where do you reside?

A. Englewood, New Jersey.

Q. What is your business?

A. Why, I am in the investment bond business, securities.

Q. Were you connected at any time with the office of the Alien Property Custodian?

A. From November 30th, 1917, until November 1, 1918, on the payroll officially, so to speak, with the Alien Property Custodian, from December 4th, 1917, on.

Q. Did you receive a substantial salary, or were you a Dollar-a-Year man?

A. Well, neither one or the other. My salary ranged from
315 two thousand dollars to three thousand dollars a year during the time I was with the Alien Property Custodian. I could not quite serve for a dollar a year.

Q. When was it that you undertook any duties for the Alien Prop
erty Custodian?

A. On and after the 30th of November, 1917.

Q. And when did you terminate your connection with him, i
you have done so?

A. I have said, I think, earlier, that I was with the Alien Prop
erty Custodian to November 30th of this year, but I should have sai
October 30th, or the 31st, the last day of the month of October 191

Q. What duties did you perform for the Alien Property Custodia
prior to December 20th, 1917?

A. Well, I was Assistant to the Manager of the General Busine
Department of the Alien Property Custodian.

Q. Who was the manager of the General Business Department?

A. Mr. Joseph A. Bower, Vice President of the Liberty Nation
Bank of New York.

Q. Where was his office for the transaction of such duties prior t
December 20th, 1917?

A. So far as he had any office, and was in the office of the Alie
Property Custodian, it was at the Liberty National Bank. We ha
no office—I think I had better explain that as far as is—
316 well, we had not organized at that time, and when he tran
acted any business, as you put it, it was done with Washin
ton.

Mr. Powell: I object to this, this statement that we were not o
ganized and all that, and I move, if the Commissioner please, to strik
out the answer and to direct the witness to begin again and give th
fact or facts.

The Commissioner: Strike it out.

The Witness (continuing): Well, put the question. I don't kno
now what the original question was.

Q. What was it, as far as you know, that Mr. Bower was doin
prior to December 20th, 1917?

A. Well, I think he had made some visits, several visits, to Was
ington, one visit anyway.

Mr. Powell: Objected to. The witness is not testifying of his ow
personal knowledge.

The Witness (continuing): Well, I can do so, if you will let me—
well, he did go down to Washington, to the best of my knowledg
and belief, of course.

Mr. Powell: How do you know whether he went to Washingto
or not? You did not see him go, did you?

The Witness: No, sir, I certainly did not.

Mr. Powell: Then you don't know?

The Witness: No.

The Commissioner: Objection sustained.

317 Q. Did Mr. Bower, during that period, have any office
all, so far as you know, except his office where he transacte
his business as President of the Liberty National Bank?

A. He had no office.
Q. What about yourself, where did you report during that period?
A. To Mr. Bower personally.
Q. Where?
A. At the Liberty National Bank.
Q. Did you yourself have any desk there?
A. No.
Q. Where was your desk?
A. Why, my desk was where it is now, with the firm that I am with.
Q. And did you have any office other than your desk at the firm with which you are connected?
A. No, no.
Q. Now, did you subsequently have an office at No. 111 Broadway?
A. Yes, sir.
Q. When was it?

Mr. Powell: That is a little unfair, Mr. Harper.
Mr. Harper: Well, cannot you bring it out on cross?
Mr. Powell: Do you mean the Alien Property Custodian
318 personally, or the witness?
Mr. Harper: I mean him personally.
The Witness: Yes, sir, No. 111 Broadway.

Q. When did you commence to have an office at No. 111 Broadway?
A. On December 24, 1917.
Q. Prior to that time had you ever done any work at 111 Broadway?
A. No, no.
Q. Had Mr. Bower, so far as you know?
A. I am certain he had not, no.
Q. What was the business that you did at this office, No. 111 Broadway?
A. Well, we were charged with the taking over—at the preliminary stages, we were simply asked to examine such property which either had or was to be demanded as being enemy property, and a determination was to be made as to what the final disposition of that was to be, but we merely examined into merchandise and informed at that early stage the Washington office, from whom we received all our instructions.

Mr. Powell: If your Honor please, I move to strike out the part in his answer where he says he received instructions, they received
our instructions, as not responsive. He was asked for what
319 he did at No. 111 Broadway. That was the question.
The Commissioner: Objection sustained.

Q. Were you independent in the work you did, or did you receive instructions from someone else?
A. Our instructions——

Mr. Powell: Objected to as incompetent, irrelevant and immateri
The Commissioner: Objection overruled.
Mr. Powell: Exception.

The Witness (continuing): The instructions were received, as
our information was, from our Washington office. We did not
in any respect without their authority and would not have kno
how to act in those early stages.
Mr. Powell: I move to strike that out, if your Honor please.
The Commissioner: Yes, strike it out.

Q. From whom in Washington did you receive these instructio
A. I should say the Bureau of Trusts, Mr. Horne, I think, b
individually, I think the man that wrote us was Mr. Hunter, M
C. E. Hunter, who was then Assistant Manager of the General Bu
ness Department with which I was connected, and whose duty
was to advise us of the cases coming up, and to inform us
320 the rulings of the Washington office in respect to them.
Q. How long did you continue to have an office at 1
Broadway ?
A. I think the date was May 1st, when we outgrew the previ
quarters at 111 Broadway.
Q. Where did you go then?
A. No. 110 West 42nd street, New York City.
Q. How long were you connected with that office?
A. Until I went back to my Peace-time job on November 1
Q. I show you Defendant's Exhibit D, and refer you only to t
printed form, and not to any writing or typewriting upon this p
ticular exhibt——
A. Yes.
Q. And will ask you whether you are not in a general way
miliar with forms such as that that were required by the Al
Property Custodian?
A. I am.
Q. And are you also familiar with the form of reports from cor
rations?
A. Form 101?
Q. Yes.
A. Yes, sir, 101.
Q. Did you while you were at 111 Broadway, receive any do
ments of that sort (showing witness)?
321 A. You mean original reports from——
Q. The public?
A. During the entire period we were at 111 Broadway?
Q. Yes.
A. Yes.
Q. In what manner were they delivered to you or your offi
A. In some instances they were thrown in on a desk in an an
room. We had a very small number of employees in the early da
no office boy at times; sometimes they came in the mail and so
times they were delivered by attorneys or so-called reporters.

Q. That is, you mean by reporters——
A. Those who reported the property were referred to in the office as reporters.
Q. Now, did you in your office keep any file of those reports as they were received from reporters?
A. No.
Q. What was the custom of your office with respect to these reporters, with respect to these reports that were thrown down upon this desk in the ante-room?
A. Well, occasionally they were received—well, once or twice I saw reports come in without even a signature, carelessness, no doubt, and sometimes they were correctly, as a rule, filled out, and
322 invariably they were forwarded to Washington. We had no place to file them.

Mr. Powell: I move to strike out the latter part of the answer of the witness, as to whether he had a place to file them.

Q. Well, did you ever file them?
A. No, we did not.

Mr. Powell: Objected to as calling for a conclusion, as to filing.

Q. I think you have already testified that you did not maintain any file of those papers in your office?
A. No.
Q. Did you make any book entries of those papers as received?
A. No part of our duties at all; we had nothing to do with it.

Mr. Powell: Objected to.
The Commissioner: Objection sustained.

Mr. Powell: And I move to strike out the answer, if the Commissioner please.
The Commissioner: Motion granted.

Q. Did you do it?
A. No, we did not.
Q. When you received these reports that were thrown in there, the anteroom, you say you looked them over, and did what?
323 A. And handed them to the young man who is charged with sending those down to Washington; they were put in the mail and forwarded to the resting place.
Q. What was your practice with regard to those that were received by mail?
A. The same thing happened.
Q. How much of an examination did you make of those papers?
A. Why, as a rule, rather a cursory one, we would look at the name of the reporter, as I have termed it, the person rendering the report, and at the bottom here, the signature, and they had to be sworn to, and frequently were not—we just looked at those points and sometimes when not too busy we examined the details out of

mere curiosity to see if anything of great importance was involve in it.

Mr. Powell: I move to strike out, out of mere curiosity. Th motive is immaterial.

The Commissioner: Oh, no, let that stand.

Mr. Powell: Exception.

Q. Did you make any tabulations, or anything of that sort, upo the face of those reports as they were received?

A. Why, no, we did not want the reporters——

Q. Yes or no, please.

A. No, we did not.

324 Mr. Powell: I move to strike that out. I did not hav time to make my objection before the witness answered. think the question of whether the representatives of the Alien Pro erty Custodian made any record, or kept any tabulation of tho reports when they received them, is immaterial and irrelevant.

Mr. Harper: I think the office custom and practice should a pear, sir.

Mr. Powell: As far as this defendant is concerned, it is immateri what they did with them. The vital fact is that they did recei reports.

Mr. Harper: They could not very well help it, sir. The repo was thrown in there.

The Commissioner: I think the purpose of your questions, an the purpose of Mr. Harper is to ascertain whether the Alien Pro erty Custodian had an office in New York for any such purpose receiving reports and this matter of filing, this question of filin and this question of tabulation is material on that issue.

Suppose the answer had been the other way, suppose they had It would have been material to your contention.

Mr. Powell: I don't think so, for this reason: suppose in th case that the custom of the Washington office, after the r 325 ports were filed in Washington, was to send them up to th district office where the place was located. The vital fact whether the report was made, not what the Alien Property Cu todian did with them afterwards.

Mr. Harper: Not whether the report was made, but where it wa to be made.

Mr. Powell: Well, both, if you please, or either one.

Mr. Harper: And the answer stands, sir?

The Commissioner: The answer stands.

Mr. Powell: Exception.

Q. Did you as these reports were received from reporters, as yo style them, make any investigation of these reports?

A. No, sir, that was nothing that we had anything to do with except that on some occasions our Washington office, on some in volved question, might have asked us to do so, as a matter of con venience, but that was not habitual, and I don't know that I reca any particular case where it was done.

Q. In that case the report was sent to you from Washington for a purpose?

A. No, sir, it was not. I did not know until my recent weeks with the Alien Property Custodian, that even a typewritten copy of an original report was ever sent by me, although I have
326 handled a good deal of property turned over as a result of these revelations, etc.

Q. I am not sure that I understand your answer to my last question. Did the Washington office ever request you to make an examination of some report that you had received from the public, and had not yet forwarded?

A. There was no instance of that kind.

Mr. Harper: That is all.

Mr. Powell: No questions.

The Commissioner: Then, gentlemen, we will call the hearing adjourned until Saturday, January 4, 1918, at ten o'clock.

(Whereupon the further hearing in the above entitled matter was adjourned to Saturday, January 4, 1919, at 10:00 o'clock A. M.)

Next Government's Exhibit No. 2.

Next Defendant's Exhibit P.

327 UNITED STATES OF AMERICA,
Southern District of New York:

Before Samuel M. Hitchcock, Esq., U. S. Commissioner.

UNITED STATES

vs.

EDWARD A. RUMELY.

New York, January 4, 1919.

Stenographer's Minutes.

Index.

Testimony of—	Direct.	Cross.	Redirect.	Recross.
Edward A. Rumely	284			
Rebuttal	295			
John S. Henry	295			
Edgar Rypinski	297	306	309	
Edward A. Rumely	312	313	316	317
Alfred J. Clayton	320			

Wm. J. Finerty, Stenographer United States Courts, U. S. Commissioner's Office, Post Office Building (down town), New York. Notary Public New York County, Kings County, Bronx County. Telephone, 1412 Cortlandt.

328 UNITED STATES OF AMERICA,
Southern District of New York:

Before Samuel M. Hitchcock, Esq., U. S. Commissioner.

UNITED STATES

vs.

EDWARD A. RUMELY.

New York, January 4, 1919.

Hearing resumed pursuant to adjournment.

Appearances:

Francis G. Caffey, Esq., United States Attorney, for the Government;
Harold Harper, Esq., Assistant U. S. Attorney, of Counsel.
Powell, Wynne & Roberts, Esqrs., Attorneys for the Defendant;
Frederick J. Powell, Esq., of Counsel.

Mr. Powell: If the Commissioner please, all I want to do now is to put Dr. Rumely on the stand and establish those salary items and then I am through.

The Commissioner: Very well. Proceed, whenever you are ready, Mr. Powell.

Mr. Powell: Dr. Rumely, will you please resume the stand.

329 EDWARD A. RUMELY, the Defendant, resumed the stand, having heretofore been duly sworn, testified further as follows:

Examined.

By Mr. Powell:

Q. Referring to Defendant's Exhibit O, and the two items reading "December 18th, E. A. R., salary, December 19, 1917, $250," and the following item, "December 18th, Larke, salary, $410"; there was some question at the last hearing as to whether those items related to salary for the month of December, 1917, or not. Have you refreshed your recollection on that point since the last hearing?

A. I have, so far as the salary for E. A. R. is concerned.

Q. That is, so far as the first item is concerned?

A. Yes, so far as the first item is concerned.

Q. Does that item represent salary for the month of December, 1917, or not?

A. It does, for the month of December.

Q. 1917?

A. 1917.

Q. And, as I understand it, that is salary for your services to the S. S. McClure Newspaper Corporation?

A. For my services to the S. S. McClure Newspaper Corporation.

Mr. Powell: That is all.

Examined.

By Mr. Harper:

330 Q. In what did those services consist, Dr. Rumely?

A. I was the managing officer, directed whatever needed to be done, endorsing paper for the company.

Q. So that the services you performed for that company during the month of December 1917, consisted in endorsing the notes that you have mentioned; is that correct?

A. Well, there were other things connected with the liquidation of the company's business, that required attention at that time.

Q. What did you do during the month of December 1917 to earn that $250, other than endorsing your name on several notes?

Mr. Powell: Objected to on the ground that it states facts to which he has not testified. By endorsement or endorsements he undoubtedly meant that he has done so as an officer of the corporation; and I think your question, Mr. Harper, should show that, or else bring out the true state of facts before you ask him that question.

Mr. Harper: I press the question, sir.

The Commissioner: He may answer.

Mr. Powell: Exception.

Mr. Harper: If the Commissioner please, the labor would be
331 the same whether he signed his own name or the name of a corporate officer.

Mr. Powell: But you have said $250 was a partial consideration for that——

Mr. Harper: I will modify the question and ask:

Q. Whether you received $250 for endorsing your name as an officer of the S. S. McClure Newspaper Corporation on these notes?

A. I received $250 for acting as the managing officer of the corporation, and doing whatever business there came——

Q. That is what I asked you. What other business than endorsing the notes coming within your bailiwick during December 1917?

A. I could not, without refreshing my memory and going back to the records.

Q. Well, did you perform any services other than putting your name on those notes?

A. I was the managing officer of the corporation and whatever steps were taken on behalf of the corporation had to originate with me.

Mr. Harper: If the Commissioner please, I move to strike out the answer as not responsive. I think I am entitled to have an
332 answer yes or no, or I do not recollect.

Q. Did you perform any services other than putting your name on those notes during the month of December 1917?

The Commissioner: Yes, you may strike out that other answer there.

Mr. Powell: I take an exception to your Honor's ruling.

The Commissionear: Your exception may be noted.

Mr. Powell: What is the question now?

The Commissioner: Just read it.

Q. (Question read.)

A. Yes, I did, but I do not recall in detail what they were.

Q. Can you state now any other single thing that you did in behalf of the S. S. McClure Newspaper Corporation to earn that $250, other than by putting your name on those notes?

A. I cannot.

Mr. Harper: That is all.

The Commissioner: Is that all?

Mr. Powell: That is all, Mr. Commissioner.

Mr. Harper: Now, if your Honor please, I press my motion to strike out from the evidence the testimony of Dr. Rumely, with regard to the payment of $410 to Larke, on December 18th.

333 I think, sir, that that payment is not material, unless those services were rendered during that time.

Mr. Powell: If the Commissioner please, I do not think that it makes any difference whether the services were rendered in December or at a prior time or any prior month. The payment of the money itself constitutes a trading within the Trading with the Enemy Act, as well as the services, as I shall show, that the payment of money back and forth is in itself a trading, and on that ground I think the evidence is material, whether the services were performed in December or some other time.

Mr. Harper: Now, sir, that question is not quite as simple as that. The statute, it is true, defines trading as the payment of money, but that is not the particular provision of the statute with which we are dealing.

Now, the S. S. McClure Newspaper Corporation was a citizen and resident of the State of New York.

Dr. Edward A. Rumely was also a citizen and resident of the State of New York.

It was not unlawful for either the S. S. McClure Newspaper Corporation or for Dr. Rumely, to trade, except so far as that trad-

334 ing might be for the benefit of the stockholder of the S. S. McClure Newspaper Corporation, to-wit, the Imperial German Government.

Now, the mere liquidation of liability during the month of December 1917, could not in any sense inure to the benefit of the stockholder- of the S. S. McClure Newspaper Corporation, so that unless it appears what that payment was for, this testimony has no probative force.

The reason that I ask to strike it out, is that if it is allowed to

stand it might be that the inference could be drawn from this payment that some service or services had been rendered for the benefit of the S. S. McClure Newspaper Corporation, subsequent to October 6th, 1917; and no such evidence appears, sir, and I think, therefore, it ought to be stricken out.

The Commissioner: At the last hearing an adjournment was had so that the period for which these last two payments were made might be shown, and it has ben shown, so far as Dr. Rumely's payment is concerned, but it has not been shown at all so far as the other payment is concerned.

335 As the record now stands, Mr. Powell, I shall grant Mr. Harper's motion to strike out, but I will give you an opportunity to supply that lack.

Mr. Powell: I think I can do that very quickly if the Commissioner please.

While we are going on with the argument, Dr. Rumely, I think you can do that, and then come back and testify to it, can you not?

The Witness: Yes, I think so.

Mr. Harper: Then, subject to the proof of that one item, do you rest?

Mr. Powell: Yes, we rest. I say that on the assumption that the man from the Alien Property Custodian's office was to give us a report as to the result of his inventigation, and you were to get a statement from Mr. Garvan. So that all of that, as I understand it, is part of our case.

Mr. Harper: Yes, that is true.

Mr. Powell: Now, if the Commissioner please I think that the record is in rather unsatisfactory shape here as regards the admission of the two New York indictments. What happened was this:

Your Honor originally admitted them provisionally, stating that you would entertain a motion of the District Attorney's to strike them out. They were then admitted as Defendant's Exhibits A & B.

336 Subsequently the record shows that, in a colloquy with me, you stated that they had already been stricken out, but the record, sir, shows no motion on Mr. Harper's part to strike them out, and consequently no objection or exception on my part to their having been stricken out; and I intend in my oral argument to do the best I can to get your Honor to change your mind on that, but, in any event, in order that the record may be in shape, I would like to formally offer those two indictments now in evidence, and, for that purpose——

Mr. Harper: Mr. Powell, I think, is correct in his recollection of the testimony, sir. These indictments were admitted provisionally, and that they never were formally stricken from the record.

Mr. Powell: You will see it, your Honor, at page 34 of the record. That is where you indicated that they were out, and there is nothing in between that and the time that you provisionally admitted them.

The original admission was on page——

The Commissioner: Now, on page 34 of the record I stated that, in regard to this indictment, I shall refuse to admit it, and sustain the objection on behalf of the District Attorney.

Mr. Powell: Well, that is true. Before that time, however, may
please your Honor, the District Attorney made no motion
337 strike them out, that is, the record does not show that he di
and therefore I had no chance to take an objection a
exception and I simply want to be put in that position now, that
all.

The Commissioner: I think that is correct.

Mr. Powell: Well, then, in order to straighten the record, may
not now make the formal offer, in order to clear up the record
that respect?

The Commissioner: Yes.

Mr. Powell: Very well. I now again offer in evidence the t
indictments in the District Court of the United States for the Sout
ern District of New York, heretofore provisionally admitted
Defendant's Exhibits A and B, thereafter stricken out, and from th
on referred to in the testimony heretofore as Defendant's Exhib
marked A and B respectively, for identification.

Mr. Harper: If your Honor please, I object to the admission
these documents, upon the ground that they are irrelevant, incomp
tent and immaterial, and upon all the grounds previously stat

The Commissioner: Objection sustained.

Mr. Powell: And I ask to have my exception noted to your Hono
ruling.

338 The Commissioner: Your exception may be noted.

Mr. Harper: What about your Exhibit C, there?

Mr. Powell: Well, the record does not show that has been strick
out, but I think the Commissioner would want to strike it out,
order to be consistent with the other rulings.

The Commissioner: Yes, I thought it had been stricken out.

Mr. Powell: At least, I do not find any note of that now.

Mr. Harper: I move, sir, then, if it is part of the record,—w
I won't qualify it——

Mr. Powell: It may not be. I don't think it has been strick
out.

Mr. Harper: I move, sir, to strike from the record, Defendan
Exhibit C, being the order for the taking of a commission, or rat
for the taking of testimony by commission, dated December 5, 19
upon the ground that that is an order in another case or cases, a
has no bearing upon this case, and is incompetent, irrelevant a
immaterial.

Mr. Powell: I object to it, if your Honor please.

The Commissioner: The exhibit referred to, may be stricken
Mr. Powell: And I take an exception.

339 The Commissioner: Your exception may be noted.

Mr. Powell: Now, I think that is all, Mr. Harper, exc
Mr. Garvan and Mr. Clayton.

The Commissioner: Then the defendant rests now, with the re
vation you have made upon the record?

Mr. Powell: Yes, sir.

Mr. Harper: I should like to move, sir, to strike out from

record the Exhibits L, M and N, being leases from the McCreery Company, landlord, to the Alien Property Custodian, tenant, on the ground that the offense having been completed, if any, upon December 20th, 1917, that the fact that there was an office of the Alien Property Custodian, if there was any, in May, 1918, or subsequently thereto, is not material to this issue, and as incompetent, irrelevant and immaterial.

Mr. Powell: I object to those exhibits being stricken out, and call your Honor's attention to the fact that the Washington indictment alleges that the defendant failed in the respect therein specified, continuously down to and including the day of the indictment, the date on the indictment being December 2, 1918.

The Commissioner: Motion denied.

340 *Rebuttal on Behalf of the Government.*

JOHN S. HENRY, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

By Mr. Harper:

Q. What is your official position, sir?

A. Clerk in the County Clerk's Office.

Q. Have you produced from the files of the County of New York a certificate of incorporation of the S. S. McClure Newspaper Corporation?

A. I have it right here, three papers (producing).

Q. Will you hand me the certificate of incorporation?

A. Yes, here is is (producing).

Q. Did you procure this paper from the regular files of the County Clerk's office?

A. Yes.

Mr. Harper: If the Commissioner please, I offer in evidence certificate of incorporation of the S. S. McClure Newspaper Corporation, filed and recorded in the office of the Clerk of the County of New York on May 20th, 1915.

Mr. Powell: No objection.

341 Mr. Harper: I ask leave, sir, to substitute—I am not in a position to do it today—a certified copy in place of the original, and the certified copy to be designated with the next Government's Exhibit number, which I think will be Government's Exhibit No. 8.

The Commissioner: Very well.

Q. Have you also produced from the files of the County Clerk's Office, the amended certificate of incorporation?

A. Yes.

Q. Of the S. S. McClure Newspaper Corporation?

A. Yes, sir (witness producing).

Mr. Harper: Now, sir, I offer in evidence the certificate of amendment of the certificate of incorporation of the S. S. McClure Newspaper Corporation, filed and recorded in the office of the County Clerk of New York, on May 27, 1915, and I make the same request that I have just made with reference to the substitution of the copy for the original, the copy to be marked Government's Exhibit 9 of this date.

The Commissioner: Very well.

Mr. Powell: Do you also offer in evidence the certificate, the stockholders' consent, and other papers comprised in the same cover, and forming part of the amending machinery?

Mr. Harper: No, my offer is limited to the amending certificate only.

Mr. Powell: Very well, then. No objection.

342 Mr. Harper: That is all, Mr. Henry.

Mr. Powell: No questions.

EDGAR RYPINSKI, a witness called on behalf of the Government in rebuttal, being first duly sworn, testified as follows:

Direct examination.

By Mr. Harper:

Q. Mr. Rypinski, where do you reside?

A. Washington, D. C.

Q. Well, that is a big place?

A. No. 1414 Sixteenth Street, Northwest, Washington, D. C.

Q. What is your official position?

A. Chief of the Mailing and Filing Division of the Alien Property Custodian.

Q. When did you go to work for the Alien Property Custodian?

A. November 1, 1917.

Q. Do you know Mr. A. Mitchell Palmer, the Alien Property Custodian?

A. Yes, sir.

Q. Who was it that employed you?

A. Mr. Palmer.

Q. Did you have a personal conference with him before you assumed your duties?

A. Yes, sir.

343 Q. Whereabouts in Washington did you go to work?

A. No. 920 F Street, Northwest.

Q. Have you been working at that address continuously?

A. No, sir. We have moved into a new building.

Q. When did you move to a new building?

A. I cannot say. Let me see.

Q. Take your time.

A. I believe it was about November 15th.

Q. What year?

A. 1917.

Q. Where was the new building?

A. Sixteenth and P Streets, Northwest, Washington.
Q. Have you been working at that address since?
A. Yes, sir.
Q. How many floors in that building does your office occupy?
A. Seven floors, and the basement.
Q. Has Mr. A. Mitchell Palmer a private office there?
A. Yes, sir.
Q. Have you seen him there?
A. Yes, sir.
Q. How frequently?
A. Oh, I should say about three times a week.
Q. Has Mr. Palmer been continuously at that office since you moved to the new building?

344 Mr. Powell: Objected to on the ground that the question calls for a conclusion on the part of the witness. I don't know whether by "continuously" you mean every day or not. The question was, whether he had been continuously there.
The Commissioner: Objection sustained.

Q. Well, has Mr. Palmer a desk in this office?
A. Yes, sir.
Q. Has he got a chair there?
A. Yes, sir.
Q. Have you seen him sitting on that chair and working at that desk?
A. Yes, sir.
Q. When you were there what business was he doing at that chair and desk?

Mr. Powell: Objected to, as the question is not limited to witness's knowledge.

Q. Well, if you know, what business was he doing when you were present there in the room, and when he was at that chair and at that desk?
A. Do you mean some certain time, or one instance?
Q. Well, every time, if you can make that answer?
A. Performing his duties, I presume.

Mr. Powell: I move to strike that out.
The Commissioner: Yes, strike it out.

345 Q. To what did the business he was doing relate?
A. To the work of the Alien Property Custodian.
Q. On all those seven floors and basement that you describe, are there individuals doing work of the Alien Property Custodian's?
A. Yes.
Q. Have you yourself been doing the work of the Alien Property Custodian?
A. Yes, sir.
Q. Have you received instructions from Mr. Palmer from time to time with regard to your own work?
A. Yes, sir.

Q. Those instructions relate to the business of the Alien Property Custodian?
A. Yes, sir.
Q. What are your personal duties?
A. I have charge of all the mail and all the files of the organization.
Q. Have you charge of the receipt of reports under Section 7-A of the Trading With the Enemy Act?
A. Yes, sir.

Mr. Powell: I assume you mean by that—well, make that a little more definite, won't you? I don't want to be asking——
Mr. Harper: Read the question.

346 Q. (Question read.) Well, do reports under Section 7-A of the Trading With the Enemy Act, come to your office?
A. Yes, sir.
Q. Now, just what are your duties with respect to those reports?
A. Why, to receive them and record them, and file them, supervise the receipt and recording and filing of them.
Q. Prior to December 5, 1917, did you receive what are known as informal reports?
A. Yes, sir.
Mr. Powell: Prior to when?
The Witness: December 5, 1917.

Mr. Harper: Yes.

Q. What was done with those informal reports as they came to your office—I am talking now of reports under Section 7-A, of the Trading with the Enemy Act, coming from the public or from the reporters, as I understand you call them?
A. All informal reports were received and recorded, the same as the formal reports were received and recorded.
Q. What was done with respect to filing?
A. They were filed the same as the formal reports are filed.
Q. Now, beginning December 5, 1917, did you begin to receive formal reports?
347 A. Yes, sir.
Q. Why didn't you get formal reports sooner, if you know?

Mr. Powell: Objected to as incompetent, irrelevant and immaterial. I don't see what bearing that has here.
Mr. Harper: I will withdraw the question.

Q. When did you first have printed forms for the making of formal reports under Section 7-A of the Trading With the Enemy Act?
A. About December 5, 1917.
Q. After that date did you receive these formal reports?
A. Yes, sir.
Q. What course did they take in your office?
A. They were received in the mailing room——

Mr. Powell: Now, just a moment. I object to that on the ground

that whatever took place in the office after these reports were filed with the Alien Property Custodian is immaterial in these proceedings.,

Mr. Harper: There is no question of estoppel here, sir, but simply a question of fact, as to where the office was.

The Commissioner: I think it is very germane to the inquiry. The objection is overruled.

Mr. Powell: And I take an exception to your Honor's ruling.

Q. (Question read.)

348 A. They were received in the mail room and sent to the index section and they were jacketed and assigned numbers, index cards were made from them, sent to the report register section to be entered in the report register, then to the Bureau of Investigation, for investigation, and then they were either recommended for trusts or "nixed," which is our term for killing them or cancelling them.

Q. Where did the reports in either case finally repose?

A. In the trust files.

Q. Well, if the report was "nixed," to adopt your term, where did that repose?

A. In the Bureau of Investigation.

Q. Was the file permanently kept in that place?

A. They are there at present. Eventually we will consolidate all those files.

Q. Where will they be then?

A. Where will they be then?

Q. Yes.

A. Wherever our organization is located.

Mr. Powell: If your Honor please, I understand, of course, that I have an objection to all this line of examination, to all this line of questions, as to the interior working of the Washington office.

The Commissioner: Yes, you may note your objection to all this line of questions, and the same ruling, and you may have

349 your exception.

Mr. Powell: Yes, sir.

Mr. Harper: The objection goes no further than the testimony, after the receipt of the reports, is incompetent.

Mr. Powell: No, no. I object to any testimony as to the interior workings of the Washington Office of the Alien Property Custodian, or as to what was done with the reports in question after they were filed in that office, or presented there, as being immaterial.

The Commissioner: You may have that same objection noted upon the record, to all that line of testimony, and I will overrule the objection and you may have an exception.

Mr. Powell: Thank you.

Q. You brought certain reports with you today when you came to New York, did you not?

A. Yes, sir.

Q. Where did you get them?

A. From our files.
Q. Where?
A. In Washington, from our trust files.
Q. Where is that, in what place?
A. Sixteenth and P Streets, Northwest.
350 Q. That is, the building from which you came?
A. Yes, sir.
Q. That is not the headquarters of the Bureau of Investigation?
A. No, sir. The Bureau of Investigation is not located in that building, but they, of course, are under the Alien Property Custodian and of a managing director.
Q. Where is the office of the Bureau of Investigation located?
A. I believe the street address is No. 1735 N Street.
Mr. Powell: You are referring to such Bureau of Investigation as there may be in Washington, D. C., are you not?
The Witness: Of the Alien Property Custodian, yes, sir.
Q. Now, are the files of those reports that you have described, are they kept at this last address, or at 16th and P Streets?
A. At 16th and P Streets.
Q. And that is where the general office is?
A. Yes, sir.
Q. You testified, I believe, that you have seen Mr. Palmer at his desk as much or as many as three times a week?
A. Yes, sir.
351 Q. For how long a period have you seen him at his desk as frequently as that?
A. A little over a year.
Q. Did you see him at his desk as often as three times a week during the months of November and December 1917?
A. Yes.
Q. Who is the director of the Bureau of Investigation?
A. Francis P. Garvan.

Mr. Harper: Your witness.

Cross-examination.

By Mr. Powell:

Q. Mr. Rypinski, your testimony as to the reports under Section 7-A, of the Trading With the Enemy Act, is confined to reports received in the Washington office, is it not?

Mr. Harper: Objected to as being too general in its nature. The witness is not capable of characterizing what his testimony is upon any given point.
The Commissioner: He may answer.

Q. (Question read.)
A. My duties are——

Mr. Powell: Now, if your Honor please, that calls for a yes or no answer. If the witness cannot answer yes or no, let him say so.

Mr. Harper: I don't think that it calls for a yes or no answer.

352 Q. (Question read.)

Mr. Powell: Now, that is capable of a yes or no answer, if the Commissioner please. It is either confined or it is not.

The Witness: I don't quite understand that question.

Mr. Powell: Well, I will reframe it.

Q. You testified in regard to certain reports, under Section 7-A of the Trading With the Enemy Act, did you not?

A. Yes, sir.

Q. You testified as to what was done with them?

A. Yes, sir.

Q. How they were issued, I mean how they were filed, once in one place, and then transferred to another bureau, and finally rested, I believe you said, in the Bureau of Trusts?

A. Yes, sir.

Q. Now, I ask you if these reports you were referring to were reports which were received in the office of the Alien Property Custodian——

A. Yes, sir.

Q. Either from members of the public or others——

A. Yes, sir.

Q. In Washington, D. C., is that correct?

A. Either people and members of the public in Wash-

353 ington?

Q. Yes.

A. They were received from all over the country.

Q. Yes, but they were all—you say they were received from all over the country?

A. Yes, sir.

Q. But they were actually received by the office in Washington, D. C.?

A. Yes, sir.

Q. Of course. In other words, you were speaking of reports that came to the office in Washington, D. C.?

A. Yes, sir.

Q. Now, you stated that you saw Mr. Palmer two or three times a week. I forget whether you said three or four times or two or three times a week, from the time of your appointment, November 1, 1917, down to date. Do I quote you correctly?

A. Yes, sir.

Q. Now, I assume that what you meant was on an average of two or three times a week?

A. Yes, sir, it was.

Q. You would not swear that for every single week of that period you had seen Mr. Palmer two or three times, would you?

A. No, sir.

Q. And you would not swear, would you, for every single

354 week in November and December, 1917, you had seen him two or three times, would you?

A. Yes, sir, I would.
Q. For every single week?
A. Yes, sir.
Q. In November and December, 1917?
A. Yes, sir.
Q. Why are you able to fix on those weeks with such particularity?
A. Because of the fact that they were, we were just starting the organization and I had to consult him quite a lot during those first two months. We did not have any organization at all when we started in, and we started in with two or three people, and he helped us all build up as we went along, and he had an intimate knowledge of my particular work.
Q. So that you did not have any organization before that?
A. No, sir.
Q. During this period of November and December, you were building up your organization in Washington?
A. Yes, sir.

Mr. Powell: That is all.

Redirect examination.

By Mr. Harper:

Q. When you say, Mr. Rypinski, that you did not have
355 an organization, do you mean that there was not an Alien Property Custodian?
A. Yes, there was.
Q. And do you mean that you were not working for the Alien Property Custodian?
A. I was working for the Alien Property Custodian.
Q. And do you mean that you did not have quarters rented in the District of Columbia?
A. We did have quarters rented in the District of Columbia.
Q. Do you mean that you were not receiving reports?
A. We were receiving reports.
Q. Do you mean that you were not keeping a file of those reports?
A. We did keep a file of reports.

Mr. Harper: That is all.
The Commissioner: What do you mean when you say then, that you had no regular organization? That is a pretty sweeping assertion.
The Witness: Well, I meant the personnel rather than anything else. We have a personnel of five hundred people now, and at that time we had a personnel on November 1, 1917, of only probably twelve people.

Q. You had the nucleus of a force that had to be expended
356 A. Yes.

Mr. Powell: You had better go on the stand, Mr. Harper.
Mr. Harper: Well, you don't object.

The Commissioner: That is all. Anything further, Mr. Harper?
Mr. Harper: No, sir. The Government rests.
Mr. Powell: Have you heard from uptown yet?
Mr. Harper: We have heard that that letter has been prepared and that Mr. Clayton is waiting to bring it down here, but Mr. Garvan has not come in to sign it yet. I would like to suggest, sir, that we might take a recess until a quarter of twelve, if that would suit your Honor's convenience.
The Commissioner: No, it would not. I think if you take a recess you had better take it for a little longer than that.
Mr. Powell: Then, if the Commissioner please, may I finish with Dr. Rumely now?
The Commissioner: Yes.

357 EDWARD A. RUMELY, the Defendant, resumed the stand in his own behalf, — having heretofore been duly sworn, testified further as follows:

Direct examination.

By Mr. Powell:

Q. Referring again to the item "December 18th, Larke, $410," shown on Defendant's Exhibit O, have you refreshed your recollection since testifying this morning?
A. I have. It is for salary for December.

Mr. Harper: I move to strike it out as not responsive.
The Commissioner: Strike out the last part of it.

Q. Are you now in a position to testify as to whether that item refers to Mr. Larke's salary for December 1917 or not?
A. I am.
Q. Does it refer to salary for the month of December 1917?
A. It does.

Mr. Harper: Just one moment. I object to that upon the ground that the matter to which the document refers is not evidence. The question is, did he render any services during December 1917, and was he paid for them on that date?
Mr. Powell: Very well. I will ask that question.

358 Q. Dr. Rumely, did Mr. Larke render any service or services to the S. S. McClure Newspaper Corporation during the month of December 1917?
A. He did, as treasurer of the company.
Q. Was he paid for those services?
A. He was.
Q. How much?
A. Four hundred and ten dollars.
Q. When?
A. On December 18th.

Q. 1917?
A. 1917.

Cross-examination.

By Mr. Harper:

Q. Dr. Rumely, you stated you had refreshed your recollection. Was that true?
A. Yes, it was.
Q. And from what did you refresh your recollection?
A. From the cash book of the S. S. McClure Newspaper Corporation.
Q. Well, will you show me the item in that cash book from which you refreshed your recollection?

Mr. Powell: Dr. Rumely shows Mr. Harper—I would like to have it noted upon the record, may it please the Commissioner, that Dr. Rumely shows at this point to Mr. Harper, an item reading as follows: "George H. Larke. Salary for December 1917."
359 Mr. Harper: For $410.00.
The Witness: Yes, sir.
Mr. Powell: $410.00.
Mr. Harper: The entry being preceded by the entry of December 18th, 1917.

Q. What services did Mr. Larke render to the S. S. McClure Newspaper Corporation during December 1917?
A. He was treasurer of the company.
Q. What did the treasurer have to do during that month?
A. The treasurer's duties I could not separate from any month, what was done in any particular month, offhand.
Q. Can you state now any particular duty or any particular service that was rendered by Mr. Larke to the S. S. McClure Newspaper Corporation in December 1917?
A. I cannot, no; and I could not for any other month either.

Mr. Harper: I move to strike out the latter part of the answer as not responsive.
The Commissioner: Yes, strike it out.

Q. What, if anything, did Mr. Larke have to do with those notes that were discounted during December for the benefit of the Mail & Express Company?
A. He may have signed them as an officer and he may have taken some of them over to the bank for discount; I do not recall.
360 Q. You are not able to state definitely now whether you signed them or he signed, or who signed them?
A. On behalf of the company?
Q. Yes.
A. I am not able to state whether he signed them or I signed them, or both of us. It is probable that we both signed as officers of the S. S. McClure Newspaper Corporation.
Mr. Powell: I did not quite get that answer.

The Witness: I say, I signed them in addition, personally, as I testified before.

Q. Yes. Is it your testimony with regard to these notes that Mr. Larke did sign them on behalf of the corporation?

A. I think he did.

Q. Do you know whether he did or not?

A. I know that he was treasurer, and that was one of the duties of the treasurer.

Q. Apart from that, you have no recollection as to whether or not he did sign them?

A. I have no recollection, specifically.

Q. Is it your testimony that it was the practice of your corporation to have two officers sign with regard to every endorsement that was made for that corporation?

361 A. Every note that was issued, yes. It may have been two officers, or one officer and the auditor, but I think it was two officers.

Q. Are you sure about that?

A. Pretty sure, yes.

Q. Can you now state any other duty that Mr. Larke performed during December 1917, for which he was paid $410 other than the signing of his name as an endorser of these notes, if he did sign them?

A. I cannot state any specific act.

Mr. Harper: That is all.

Redirect examination.

By Mr. Powell:

Q. Dr. Rumely, can you at the present time definitely describe any specific acts which Mr. Larke did for any other month than December 1917?

Mr. Harper: Objected to as incompetent, irrelevant and immaterial, and further on the ground that he is attempting now to impeach his own witness.

The Commissioner: He may answer.

A. I could not allocate to any particular month any specific act or acts.

Mr. Powell: That is all.

The Commissioner: Is that all?

Mr. Harper: Did you keep in close touch with the operations of the S. S. McClure Newspaper Corporation?

The Witness: Had general supervision of them, yes.

362 Recross-examination.

By Mr. Harper:

Q. I believe you already testified that you were the executive head of the company?

A. Managing Vice-President.

Q. And yet you could not at this time state anything that Mr. Larke did for the corporation; is that correct?

A. Other than his duties. He was the Treasurer, and he could discharge the duties of Treasurer of the Company, and that comprised a range of duties specified in the by-laws. He filled that position; but I am not able to pick out any particular act and say that he did that in this month.

Q. You are not at this time able to state any single thing that Mr. Larke ever did for the S. S. McClure Newspaper Corporation for which he got a salary, and to state the date on which he did that; is that correct?

A. I might, on reflection.

Q. Well, reflect.

A. He attended directors' meetings in November.

Q. Do you recall anything else he ever did at any particular time?

A. Made out notes that the company wished to borrow on, and made arrangements with the banks.

Q. When did he make out a particular note you have in mind?

363 A. I have no particular note in mind. One of the exhibits may show the date of some note.

Mr. Harper: That is all.

Mr. Powell: Any further questions?

Mr. Harper: No.

Mr. Powell: I have nothing further to ask. At the last hearing, in order to avoid embarrassing Mr. Garvan by having him subpœnaed to attend here, I suggested that if Mr. Garvan would write Mr. Harper a letter, giving the number of times, or regarding the times at which Mr. Garvan had seen Mr. Palmer in this jurisdiction, why I would accept the evidence in that form.

Now, if your Honor please, Mr. Harper has just handed me a letter from Mr. Garvan, addressed to him, dated January 4th, 1919, and it reads as follows——

Mr. Harper: And just state there on the record that it is on the stationery of the Alien Property Custodian.

Mr. Powell: Yes, sir, on the stationery of the Alien Property Custodian. Now, before I read it, may I ask if it is stipulated that this letter may go in evidence here with the same force and effect as if Mr. Garvan was here on the stand and had testified in accordance with the contents of the letter?

364 Mr. Harper: Yes.

Mr. Powell: Very well. The letter is as follows:

"A. P. C. 201.

In replying address only The Alien Property Custodian and re-
er to Case No. —.

Alien Property Custodian,
Sixteenth and P Streets N. W.,
Washington, D. C.

Bureau of Investigation, Francis P. Garvan, Director.

110 West 42nd Street,
New York City, January 4, 1919.

. S. District Attorney, Post Office Building, New York City.

DEAR SIR: "In reply to your inquiry, would say that the Alien
roperty Custodian, Mr. A. Mitchell Palmer, has called at this office
see me, in regard to matters relating to this Bureau, about eight
ten times since my appointment on November 12, 1917. My best
collection is that the duration of these calls was from two to five
urs each.

"Very truly yours,
(Signed) FRANCIS P. GARVAN,
Director Bureau of Investigation.

A. J. C./G. U.

5 (In red ink:) "In the correspondence of the Alien Prop-
erty Custodian the word 'enemy' is used as meaning 'enemy'
'ally of enemy' as defined by the Trading with the enemy Act."

ALFRED J. CLAYTON, called as a witness on behalf of the Defend-
t, having heretofore been duly sworn, testified further as follows:

Direct examination.

By Mr. Powell:

Q. Mr. Clayton, at the last hearing you were requested by the
mmissioner, at my suggestion, to make an examination of the files
the office of the Alien Property Custodian at No. 110 West 42nd
reet, and endeavor to find copies of any letters or of certain letters
ich you had referred to in your testimony; is that correct?
A. Yes, sir.
Q. Have you made such a search since the last hearing?
A. I have.
Q. Have you found any such letters or copies of any such letters?
A. No, I have not been able to.

Mr. Powell: That is all.

366 Mr. Harper: If the Commissioner please, in view of th
form in which this evidence contained in this letter was re
ceived, I did not at the time note an objection, and of course I ha
no objection as to the form in which the evidence was received, but
should like my objection noted to the relevancy and materiality of it
I am referring, sir, to the letter from Mr. Garvan, which was rea
into the record by Mr. Powell a few moments ago, my objection be
ing based upon the fact that it relates to a state of facts subsequen
to December 20th, 1917, and subsequent to the time when the offens
was committed.

The Commissioner: Objection overruled.

Mr. Harper: Now, do you rest, Mr. Powell?

Mr. Powell: We rest. The defendant rests.

Mr. Harper: The Government rests.

The Commissioner: Then we will take an adjournment now unti
1:30 P. M.

(Recess until 1:30 P. M.)

367 Afternoon Session.

(1:30 p. m.)

(Mr. Powell made oral argument to the Commissioner on behal
of the defendant.)

(Mr. Harper made oral argument to the Commissioner on behalf o
the Government in opposition.)

Mr. Powell: If the Commissioner please, the defendant at thi
times moves for a dismissal of these proceedings on the followin
grounds:

(*a*) On all and each of the grounds set forth by him at the close o
the Government's direct case, and without limiting such motion o
those grounds, upon the following additional grounds:

(*b*) On the further ground that there is no evidence before th
Commissioner sufficient to establish probable cause that the defend
ant was guilty of any crime or offense against the United States, as al
leged in the indictment, but that it now appears by affirmative proo
that the defendant did not commit any offense against the Unite
States, as alleged in the indictment, and that the defendan
368 did not fail, neglect and omit to make out the report to th
Alien Property Custodian, prescribed by the Act of Congres
known as the Trading with the enemy Act, within the period pre
scribed, as alleged in the indictment.

(*c*) On the further ground, with respect to the second count of th
indictment, that the indictment fails to allege and that the evidenc
has failed to establish that the alleged debt which the defendant i
charged with failing to report, had ever become due.

(*d*) On the further ground that there is no evidence before th
Commissioner sufficient to establish probable cause that the defendan
was guilty of any crime or offense against the United States, cogniza
ble by the Supreme Court of the District of Columbia, but that i
affirmatively appears that the defendant was not within the District
of Columbia at the time of the alleged commission of the alleged
offense, and it appears that the defendant was under no duty to do

within the said District of Columbia, any of the acts or things charged in the indictment.

(*e*) On the further ground that it appears that the Supreme Court of the District of Columbia has not exclusive jurisdiction of
369 the offense alleged in the indictment.

(*f*) On the further ground that it affirmatively appears that the defendant has been indicted by the Grand Jury in and for the Southern District of New York, and is awaiting trial under indictments returned by the said Grand Jury, and has given bail for his appearance within the said Court, and that the removal of the defendant to be tried under the alleged indictment in the District of Columbia, will result in the denial of the right of the defendant under the Sixth Amendment to the Constitution of the United States, to a speedy trial of such indictment in the Southern District of New York.

(*g*) On the further ground that it affirmatively appears that the defendant is awaiting trial in the District Court of the United States for the Southern District of New York upon the two indictments returned by the Grand Jury in the said District, and that the consent of the said District Court for the Southern District of New York, has not been obtained to the prosecution of these proceedings, or to the removal of the defendant to be tried upon the alleged indictment in the District of Columbia, and that the Commissioner is, therefore, without authority, and has no jurisdiction to commit the defendant for removal.

370 (*h*) On the further ground that, in view of the evidence that the defendant is so awaiting trial in the District Court for the Southern District of New York, and in view of all the evidence before the Commissioner, the removal of the defendant, as requested by the Government, should not be ordered or approved by the Commissioner.

(*i*) On the further ground that if the said Trading with the enemy Act upon which the indictment purports to be based, or any other statute of the United States, is to be construed as requiring a return of the facts stated in said indictment, the same were enacted in excess of any power conferred upon Congress by the Constitution of the United States, and with respect to the defendant are in violation of the rights and immunities accorded to him by the Fifth Amendment of said Constitution, in that they would compel him in a criminal case to be a witness against himself; and that, therefore, the evidence before the Commissioner fails to show probable cause that the defendant was guilty of any crime or offense against the United States, as alleged in the indictment.

(*j*) On the further ground that under all the evidence be-
371 fore the Commissioner, a proper case for the removal of the defendant as requested by the Government, has not been presented.

I ask that each of these grounds may be applied to each one of the counts in the indictment, with the same force and effect as though I had stated them in particular in regard to the two counts respectively, except as hereinbefore stated otherwise, and that a ruling may be had with respect to each count, and that I may be given an excep-

tion to the overruling or denial of the motions in respect of each ground, and in respect of each count.

Mr. Harper: Now, if the Commissioner please, I move that the defendant be committed for removal to the District of Clumbia.

The Commissioner: Decision reserved. Hearing adjourned until January 18th, 1919, at ten o'clock A. M.

Briefs to be exchanged by counsel on or before January 11th, 1919, and to be submitted to me on or before January 15th, 1919.

(Whereupon the further hearing in the above entitled matter was adjourned to Saturday, January 18, 1919, at 10 o'clock A. M.)

372 UNITED STATES OF AMERICA,
Southern District of New York:

Before Samuel M. Hitchcock, Esq., U. S. Commissioner.

UNITED STATES
vs.
EDWARD A. RUMELY.

New York, January 18, 1919.

Stenographer's Minutes.

Index.

Testimony of—	Direct.	Cross.	Redirect.	Recross.
Decision	327–329			

Wm. J. Finerty, Stenographer United States Courts, U. S. Commissioner's Office, Post Office Building (down town), New York.
Notary Public New York County, Kings County, Bronx County.
Telephone, 1412 Cortlandt.

373 UNITED STATES OF AMERICA,
Southern District of New York:

Before Samuel M. Hitchcock, Esq., U. S. Commissioner.

UNITED STATES
vs.
EDWARD A. RUMELY.

New York, January 18, 1919.

Hearing resumed pursuant to adjournment.

Appearances:

Francis G. Caffey, Esq., United States Attorney, for the Government;
Harold Harper, Esq., Assistant U. S. Attorney, of Counsel.

Powell, Wynne & Roberts, Esqrs., Attorneys for the Defendant; Frederick J. Powell, Esq., of Counsel.

The Commissioner: I have examined the briefs submitted with a great deal of care and a great deal of interest, but have had no time in which to prepare an opinion formally.

374 It seems to me, however, that the interest of neither side will be furthered by such an opinion, and I will briefly make my ruling upon the defendant's motion to dismiss as it was presented at page 322 of the minutes.

In the first place, in my judgment, the Supreme Court of the District of Columbia, has exclusive jurisdiction of the offense charged in the indictment and the indictment itself seems to me to be sufficient in both of its counts, and substantially and effectively charges a criminal offense, and is prima facie evidence of the facts set forth in the indictment; and I find that the evidence on the part of the defendant is insufficient to overcome the probative effect of the indictment.

I think I need say nothing further in regard to the grounds stated as (*a*), (*d*), (*e*), (*f*), (*h*), (*i*), and (*j*).

As to ground (*b*), it seems that the offense charged is not a failure to make out a report to the Alien Property Custodian, but rather a failure to include in a report a statement of facts called for by the statute, if such a condition exists.

Ground (*c*), I interpret the word "due" as used in the statute, to be the equivalent of owing, and, therefore, that the debt owing should have been reported.

375 Ground (*g*), the objection that the consent "(of the District Court for the Southern District of New York has not been obtained to the prosecution of this proceeding or to the removal of the defendant)" may be pressed before the Court upon the application for an order of removal.

The motion of the defendant is, therefore, denied, and the motion of the United States District Attorney is granted, and a commitment will be issued to the Marshal to detain the defendant to await the order of the Court for his removal.

Mr. Powell: I respectfully except to your Honor's ruling, denying the defendant's motion to dismiss, and granting the Government's motion to remand.

The Commissioner: Your exception may be noted.

376 DEFENDANT'S EXHIBIT A FOR IDENTIFICATION.

District Court of the United States of America for the Southern District of New York.

At a Stated Term of the District Court of the United States of America for the Southern District of New York, begun and held in the City of New York, within and for the District aforesaid, on the first Tuesday of July, in the year of our Lord one thousand nine

hundred and eighteen, and continued by adjournment to and in
cluding the 2nd day of August, in the year of our Lord one thousand
nine hundred and eighteen.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

The Grand Jurors of the United States of America within and for
the District aforesaid on their oath present that heretofore, to wit, on
the 6th day of October, 1917, and continuously on each and every
day thereafter down to and including the date of this indictment, at
the Southern District of New York and within the jurisdiction of
this Court, Edward A. Rumely and S. Walter Kaufmann, together
with divers other persons whose names are to the Grand Jurors un
known, unlawfully, wilfully, knowingly and corruptly did con
spire and agree with each other to commit an offense against the
United States, that is to say, the said persons did conspire and agree
as aforesaid that the said Edward A. Rumely, who then and there
held, had, and had the custody and control of certain property, to
wit, 9,260 shares, or thereabouts, of the preferred capital stock and
6,657 shares, or thereabouts, of the common capital stock of S. S.
McClure Newspaper Corporation, a corporation organized and exist
ing under and by virture of the laws of the State of New York, of
for, and on behalf of a certain enemy, to wit, the Imperial
377 German Government, should fail, neglect and omit to report
to the Alien Property Custodian the fact that he held, had
and had the custody and control of such property and to furnish
such particulars of such property as the said Alien Property Cus
todian should require.

Overt Acts.

And to effect the object of the said conspiracy, and in pursuance
thereof, the said Edward A. Rumely, on the 4th day of December
1917, at the Southern District of New York and within the juris
diction of this Court, did make a certain report to the Alien Property
Custodian and did subscribe the said report, and did subscribe a
certain affidavit thereto annexed that the said report and answers
therein made were true and correct, and did take oath to said affi
davit before one John M. Lowrie, a notary public of the State of
New York;

And further to effect the object of the said conspiracy, and in
pursuance thereof the said S. Walter Kaufmann, on the 4th day of
December, 1917, at the Southern District of New York and within
the jurisdiction of this Court, did make a certain report to the Alien
Property Custodian and did subscribe the said report, and did sub
scribe a certain affidavit thereto annexed that the said report and
answers therein made were true and correct, and did take oath to
said affidavit before one Bertram H. Mautner, a notary public of the
State of New York;

And further to effect the object of the said conspiracy, and in
pursuance thereof, the said Edward A. Rumely, on the 5th day of

December, 1917, at the Southern District of New York and within the jurisdiction of this Court, did subscribe a certain letter
378 dated that day and addressed to Honorable A. Mitchell Palmer, Alien Property Custodian, and caused the said letter to be mailed to the said Alien Property Custodian; against the peace of the United States and their dignity and contrary to the form of the Statute of the United States in such case made and provided. (Section 37 U. S. C. C.)

Second Count.

And the Grand Jurors aforesaid, on their oath aforesaid, do further present that heretofore, to wit, on the 6th day of October, 1917, and continuously on each and every day thereafter down to and including the date of this indictment, at the Southern District of New York and within the jurisdiction of this Court Edward A. Rumely and S. Walter Kaufmann, together with divers other persons whose names are to the Grand Jurors unknown, unlawfully, wilfully, knowingly and corruptly did conspire and agree with each other to commit an offense against the United States, that is to say, the said persons did conspire and agree as aforesaid that the said Edward A. Rumely, who was then and there indebted to an enemy, to wit, the Imperial German Government, in the sum of $1,431,700, or thereabouts, should fail, neglect and omit to report the fact of such indebtedness and such particulars thereof as the Alien Property Custodian should require to the Alien Property Custodian.

Overt Acts.

And to effect the object of the said conspiracy, and in pursuance thereof, the said Edward A. Rumely, on the 4th day of De-
379 cember, 1917, at the Southern District of New York and within the jurisdiction of this Court, did make a certain report to the Alien Property Custodian, and did subscribe the said report, and did subscribe a certain affidavit thereto annexed that the said report and answers therein made were true and correct, and did take oath to said affidavit before one John M. Lowrie, a notary public of the State of New York;

And further to effect the object of the said conspiracy, and in pursuance thereof, the said S. Walter Kaufmann, on the 4th day of December, 1917, at the Southern District of New York and within the jurisdiction of this Court, did make a certain report to the Alien Property Custodian and did subscribe the said report, and did subscribe a certain affidavit thereto annexed that the said report and answers therein made were true and correct, and did take oath to said affidavit before one Bertram H. Mautner, a notary public of the State of New York;

And further to effect the object of the said conspiracy, and in pursuance thereof, the said Edward A. Rumely, on the 5th day of December, 1917, at the Southern District of New York and within the jurisdiction of this Court, did subscribe a certain letter dated

that day and addressed to Honorable A. Mitchell Palmer, Alie
Property Custodian, and caused the said letter to be mailed to th
said Alien Property Custodian; against the peace of the United State
and their dignity and contrary to the form of the Statute of th
United States in such case made and provided. (Section 37 U. S
C. C.)

380 Third Count.

And the Grand Jurors aforesaid, on their oath aforesaid, do furthe
present that heretofore, to wit, on the 6th day of October, 191
and continuously on each and every day thereafter down to an
including the 4th day of December, 1917, at the Southern District o
New York and within the jurisdiction of this Court, Edward A
Rumely and S. Walter Kaufmann, together with divers other person
whose names are to the Grand Jurors unknown, unlawfully, wilfully
knowingly and corruptly did conspire and agree with each other t
commit an offense against the United States, that is to say, the sai
persons did conspire and agree as aforesaid that the said Edward A
Rumely, having taken an oath before an officer and person compe
tent to administer the oath hereinafter mentioned in a case in whic
a law of the United States authorized an oath to be administered, t
wit, in a certain written declaration, certificate and statement to th
Alien Property Custodian, hereinafter more particularly describe
that the said written declaration, certificate and statement by hi
subscribed was true, contrary to such oath should state and subscri
certain material matter which he then and there should not believ
to be true, that is to say, the said Edward A. Rumely should by suc
written declaration, certificate and statement report to the Alie
Property Custodian that he was indebted to an enemy or ally o
enemy, or to a person whom he had reasonable cause to believe to b
an enemy or ally of enemy, to wit, one Herman Sielcken, a citize
of the United States of America, and should give certain particula
of such alleged indebtedness and should make a simil
381 report of all debts owed to said Herman Sielcken on the 3r
day of February, 1917, and should subscribe the said writte
declaration, certificate and statement and take an oath before a
officer and person competent to administer said oath that the sai
written declaration, certificate and statement by him subscribed w
true, in which said declaration, certificate and statement it shoul
be a material matter whether or not the said Edward A. Rumely w
then and there indebted to the said Herman Sielcken; whether o
not said Edward A. Rumely was so indebted in the sum of $100,000
whether such indebtedness was upon and evidenced by a certai
instrument and obligation, to wit, a note for $100,000, dated Septem
ber 14, 1917, payable at National City Bank two years after dat
whereof Edward A. Rumely was the maker; whether or not the sai
Herman Sielcken was a party to the said instrument and obligation
whether or not said note was payable to the order of said Herma
Sielcken; whether or not the said Edward A. Rumely on the 3rd da
of February, 1917 was indebted to the said Herman Sielcken; wheth

or not the said Edward A. Rumely was so indebted in the sum of $1,301,700; whether or not such indebtedness was upon and evidenced by two notes one dated January 24, 1917 for $551,700, and one dated June 1, 1915 for $750,000, both notes bearing interest at 5% per annum, both payable 60 days after demand; and whether or not the said Edward A. Rumely on the said 3rd day of February, 1917, owed on behalf of the said Herman Sielcken the said two notes; in which said declaration, certificate and statement the said Edward A. Rumely should declare, certify and state falsely among other things in substance and to the effect that the said Edward A. Rumely was then and there indebted to the said Herman Sielcken; that
382 the said Edward A. Rumely was so indebted in the sum of $100,000; that such indebtedness was upon and evidenced by a certain instrument and obligation, to wit, a note for $100,000 dated September 14, 1917, payable at National City Bank two years after date, whereof Edward A. Rumely was the maker; that the said Herman Sielcken was a party to the said instrument and obligation; that the said note was payable to the order of said Herman Sielcken; that the said Edward A. Rumely on the 3rd day of February, 1917, was indebted to the said Herman Sielcken; that the said Edward A. Rumely was so indebted in the sum of $1,301,700; that such indebtedness was upon, and evidenced by two notes, one dated January 24, 1917 for $551,700, one dated June 1, 1915 for $750,000, both notes bearing interest at 5% per annum, payable 60 days after demand, and that said Edward A. Rumely on the said 3rd day of February, 1917, owed on behalf of said Herman Sielcken the said two notes; whereas, in truth and in fact, it was not true and at the time of so stating and subscribing it should not be true that the said Edward A. Rumely was then and there indebted to the said Herman Sielcken; that the said Edward A. Rumely was so indebted in the sum of $100,000; that such indebtedness was upon and evidenced by a certain instrument and obligation, to wit, a note for $100,000 dated September 14, 1917, payable at National City Bank two years after date, whereof Edward A. Rumely was the maker; that the said Herman Sielcken was a party to the said instrument and obligation; that the said note was payable to the order of said Herman Sielcken; that the said Edward A. Rumely on the 3rd day of February, 1917, was indebted to the said Herman Sielcken; that the said Edward A. Rumely was so indebted in the sum of $1,301,700; that such indebtedness was upon and evidenced by two notes, one date- January
383 24, 1917 for $551,700, one dated June 1, 1915 for $750,000, both notes bearing interest at 5% per annum, payable 60 days after demand; or that said Edward A. Rumely on the said 3rd day of February, 1917, owed on behalf of said Herman Sielcken the said two notes; and whereas the said Edward A. Rumely had not received any consideration or value from or on behalf of the said Herman Sielcken for any of the notes, instruments or obligations heretofore mentioned, and the said Edward A. Rumely had not delivered to the said Herman Sielcken or to any person or persons acting in his behalf any of the notes, instruments or obligations hereinbefore mentioned.

Overt Acts.

And to effect the object of the said conspiracy, and in pursuance thereof, the said Edward A. Rumely, on the 4th day of December, 1917, at the Southern District of New York and within the jurisdiction of this Court, did make a certain report to the Alien Property Custodian and did subscribe the said report, and did subscribe a certain affidavit thereto annexed that the said report and answers therein made were true and correct, and did take oath to said affidavit before one John M. Lowrie, a notary public of the State of New York; against the peace of the United States and their dignity and contrary to the form of the Statute of the United States in such case made and provided. (Section 37 U. S. C. C.)

FRANCIS G. CAFFEY,
United States Attorney.

384 [Endorsed:] U. S. District Court. The United States of America vs. Edward A. Rumely and S. Walter Kaufmann Indictment, Conspiracy to omit report to Alien Property Custodian § 37 U. S. C. C. Francis G. Caffey, U. S. Attorney.

385 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, Alexander Gilchrist, Jr., Clerk of the District Court of the United States for the Southern District of New York, do hereby Certify that the Writings annexed to this Certificate have been compared by me with their originals on file and remaining of record in my office that they are correct transcripts therefrom and of the whole of the said originals.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said Court at the City of New York, in the Southern District of New York, this 13th day of December, in the year of our Lord one thousand nine hundred and eighteen, and of the Independence of the said United States the one hundred and forty third.

(Signed) ALEX. GILCHRIST, JR., *Clerk.*

386 DEFENDANT'S EXHIBIT B FOR IDENTIFICATION.

District Court of the United States of America for the Southern District of New York.

At a Stated Term of the District Court of the United States of America for the Southern District of New York, begun and held in the City and County of New York, within and for the District aforesaid, on the first Tuesday of July in the year of our Lord one thousand nine hundred and eighteen, and continued by adjournment to and including the 2nd day of August, in the year of our Lord one thousand nine hundred and eighteen.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

The Grand Jurors of the United States of America within and for the District aforesaid on their oath present that heretofore, to wit, on the 4th day of December, 1917, at the Southern District of New York and within the jurisdiction of this Court, Edward A. Rumely, unlawfully, wilfully and knowingly, having taken an oath before one John M. Lowrie, a Notary Public of the State of New York, duly authorized and empowered to administer oaths within the County of New York, who was then and there an officer and person competent to administer the oath hereinafter mentioned, in a case in which a law of the United States then and there authorized an oath to be administered, to wit, in a certain written declaration, certificate and statement to the Alien Property Custodian hereinafter more particularly described, that the said written declaration, certificate and statement by him subscribed was true, contrary to such oath did state and subscribe certain material matter which he then and there did not believe to be true, that is to say, the said Edward A. Rumely, on the day aforesaid, at the County of New York, within the district aforesaid, did by the said written declaration, certificate and statement report to the Alien Property Custodian that he
387 was indebted to an enemy or ally of enemy or to a person whom he then had reasonable cause to believe to be an enemy or ally of enemy, to wit, one Herman Sielcken, a citizen of the United States of America, and certain particulars of such indebtedness, and did make a similar report of all debts owed to said Herman Sielcken on the 3rd day of February, 1917, and did subscribe the said written declaration, certificate and statement and did take his oath before the said John M. Lowrie, that the said written declaration, certificate and statement by him subscribed was true, in which said declaration, certificate and statement it was a material matter whether or not said Edward A. Rumely was then and there indebted to the said Herman Sielcken; whether or not said Edward A. Rumely was so indebted in the sum of $100,000; whether such indebtedness was upon, and evidenced by, a certain instrument and obligation, to wit, a note for $100,000 dated September 14, 1917, payable at National City Bank two years after date, whereof Edward A. Rumely was the maker; whether or not the said Herman Sielcken was a party to the said instrument and obligation; whether or not said note was payable to the order of said Herman Sielcken; whether or not the said Edward A. Rumely on the 3rd day of February, 1917, was indebted to the said Herman Sielcken; whether or not the said Edward A. Rumely was so indebted in the sum of $1,301,700; whether or not such indebtedness was upon, and evidenced by, two notes, one dated January 24, 1917 for $551,700, and one dated June 1, 1915 for $750,000, both notes bearing interest at five per cent per annum, payable 60 days after demand, and whether or not the said Edward A. Rumely on the said third day of February, 1917, owed on behalf of the said Herman Sielcken the said two notes; in which said declaration, certificate and statement the said Edward A. Rumely

did declare, certify and state falsely among other things in substance and to the effect that the said Edward A. Rumely was then and there indebted to the said Herman Sielcken; that the said Edward A. Rumely was so indebted in the sum of $100,000; that such
388 indebtedness was upon, and evidenced by, a certain instrument and obligation, to wit, a note for $100,000 dated September 14, 1917, payable at National City Bank two years after date, whereof Edward A. Rumely was the maker; that the said Herman Sielcken was a party to the said instrument and obligation; that the said note was payable to the order of said Herman Sielcken; that the said Edward A. Rumely on the 3rd day of February, 1917, was indebted to the said Herman Sielcken; that the said Edward A. Rumely was so indebted in the sum of $1,301,700; that such indebtedness was upon, and evidenced by, two notes, one dated January 24, 1917 for $551,700, one dated June 1, 1915 for $750,000, both notes bearing interest at 5 per cent per annum, payable sixty (60) days after demand, and that said Edward A. Rumely on the said 3rd day of February, 1917, owed on behalf of said Herman Sielcken the said two notes; whereas in truth and in fact it was not and is not true, and, at the time of so stating and subscribing, the said Edward A. Rumely did not believe it to be true, that the said Edward A. Rumely was then and there indebted to said Herman Sielcken; or that the said Edward A. Rumely was so indebted in the sum of $100,000; or that such indebtedness was upon, and evidenced by, a certain instrument and obligation, to wit, a note for $100,000 dated September 14, 1917, payable to National City Bank two years after date whereof Edward A. Rumely was the maker; or that the said Herman Sielcken was a party to the said instrument or obligation; or that the said note was payable to the order of said Herman Sielcken; or that the said Edward A. Rumely on the 3rd day of February, 1917, was indebted to the said Herman Sielcken; or that the said Edward A. Rumely was so indebted in the sum of $1,301,700; or that such indebtedness was upon, or evidenced by, two notes, one dated January 24, 1917 for $551,700, and one dated June 1, 1915
for $750,000; both notes bearing interest at 5 per cent per an-
389 num, payable sixty (60) days after demand, or that the said Edward A. Rumely on the said 3rd day of February, 1917 owed on behalf of the said Herman Sielcken the said two notes.

And the Grand Jurors aforesaid on their oath aforesaid, do further present that with respect to the aforesaid material matter the true facts are and were that, at the time of so declaring, certifying and stating, the said Edward A. Rumely was not indebted to the said Herman Sielcken; that the said Edward A. Rumely was not so indebted in the sum of $100,000; that such alleged indebtedness was not upon, or evidenced by, a certain instrument and obligation, to wit, a note for $100,000, dated September 14, 1917, payable at National City Bank two years after date, whereof Edward A. Rumely was the maker; that the said Herman Sielcken was not a party to the said alleged instrument and obligation; that the said alleged note was not payable to the order of said Herman Sielcken; that the said Edward A. Rumely, on the 3rd day of February, 1917, was not in-

debted to the said Herman Sielcken; that the said Edward A. Rumely was not so indebted in the sum of $1,301,700; that such alleged indebtedness was not upon, or evidenced by, two notes, one dated January 24, 1917 for $551,700 and one dated June 1, 1915 for $750,000, both notes bearing interest at 5 per cent per annum, payable sixty (60) days after demand, that the said Edward A. Rumely on the said 3rd day of February, 1917, did not owe on behalf of the said Herman Sielcken the said two notes; that the said Edward A. Rumely at all the times hereinbefore mentioned was not indebted to the said Herman Sielcken in any sum or amount whatever; that the said Edward A. Rumely had not received any consideration or value from or on behalf of the said Herman Sielcken for any of the notes, instruments or obligations heretofore mentioned, and that the said Edward A. Rumely had not delivered to the said Herman Sielcken or to any person or persons acting in his be-
390 half any of the notes, instruments or obligations hereinbefore mentioned.

And so the Grand Jurors aforesaid, on their oath aforesaid, do say that the said Edward A. Rumely on the day aforesaid at the Southern District of New York, and within the jurisdiction of this Court, in manner and form as aforesaid, committed wilful and corrupt perjury; against the peace of the United States and their dignity and contrary to the form of the Statute of the United States in such case made and provided. (Section 125 U. S. C. C.)

Second Count.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present that heretofore, to wit, on the 4th day of December, 1917, at the Southern District of New York and within the jurisdiction of this Court, Edward A. Rumely, unlawfully, wilfully and knowingly, having taken an oath before one John M. Lowrie, a Notary Public of the State of New York, duly authorized and empowered to administer oaths within the County of New York, who was then and there an officer and person competent to administer the oath hereinafter mentioned, in a case in which a law of the United States then and there authorized an oath to be administered, to wit, in a certain written declaration, certificate and statement to the Alien Property Custodian hereinafter more particularly described, that the said written declaration, certificate and statement by him subscribed was true, contrary to such oath did state and subscribe certain material matter which he then and there did not believe to be true, that is to say, the said Edward A. Rumely, on the day aforesaid, at the County of New York, within the District aforesaid, did make
391 to the Alien Property Custodian a certain written declaration, certificate and statement, wherein it was stated and set forth among other things that the said Edward A. Rumely then and on the 3rd day of February, 1917, was indebted to a certain enemy or ally of enemy or to a person whom he had reasonable cause to believe to be an enemy or ally of enemy, to wit, one Herman Sielcken, a citizen of the United States of America, and did subscribe the said

written declaration, certificate and statement, and did take his oath before the said John M. Lowrie, that the said declaration, certificate and statement by him subscribed was true; in which said declaration, certificate and statement it was a material matter whether or not on the 3rd day of February, 1917, the said Edward A. Rumely held, had or had the control of any property, beneficial or otherwise, alone or jointly with others, of, for, or on behalf of, any person other than the said Herman Sielcken who was an enemy or ally of enemy, or whom he might have reasonable cause to believe to be an enemy or ally of enemy, of which he had not yet made a report to the Alien Property Custodian; in which said declaration, certificate and statement the said Edward A. Rumely did declare, certify and state falsely among other things, in substance and to the effect that the said Edward A. Rumely on the 3rd day of February, 1917, did not hold, have or have the control of any property, beneficial or otherwise, alone or jointly with others, of, for, or on behalf of any person other than the said Herman Sielcken who was an enemy or ally of enemy, or whom he might have reasonable cause to believe to be an enemy or ally of enemy, of which he had not yet made a report to the Alien Property Custodian; whereas, in truth and in fact, it was not
392 and is not true, and at the time of so stating and subscribing the said Edward A. Rumely did not believe it to be true that, on the 3rd day of February, 1917, the said Edward A. Rumely did not hold, have or have the control of any property, beneficial or otherwise, alone or jointly with others, of, for, or on behalf of any person other than the said Herman Sielcken who was an enemy or ally of enemy, or whom he might have reasonable cause to believe to be an enemy or ally of enemy, of which he had not yet made a report to the Alien Property Custodian;

And the Grand Jurors aforesaid, on their oath aforesaid, do further present that in respect to the aforesaid material matter, the true facts are and were that on the 3rd day of February, 1917, the said Edward A. Rumely held, had and had the control of certain property consisting of 8,510 shares, or thereabouts, of the preferred capital stock of 5,907 shares, or thereabouts, of the common capital stock of S. S. McClure Newspaper Corporation, a corporation organized and existing under and by virtue of the laws of the State of New York, of, for, and on behalf of the Imperial German Government, one Johann von Bernstorff, who was then and there the Ambassador of said Imperial German Government to the United States and acting as such, and one Heinrich F. Albert, who was then and there the Commercial Attache of said Imperial German Government in the United States and acting as such, and that the said Edward A. Rumely had not yet reported the said property to the Alien Property Custodian.

And so the Grand Jurors aforesaid, on their oath aforesaid, do say that the said Edward A. Rumely on the day aforesaid at the Southern District of New York, and within the jurisdiction of this Court, in manner and form as aforesaid, committed wilful and corrupt
393 perjury; against the peace of the United States and their dignity and contrary to the form of the Statute of the United States in such case made and provided. (Section 125 U. S. C. C.)

Third Count.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present that heretofore, to wit, on the 4th day of December, 1917, at the Southern District of New York and within the jurisdiction of this Court, Edward A. Rumely, unlawfully, wilfully and knowingly, having taken an oath before one John M. Lowrie, a Notary Public of the State of New York, duly authorized and empowered to administer oaths within the County of New York, who was then and there an officer and person competent to administer the oath hereinafter mentioned, in a case in which a law of the United States then and there authorized an oath to be administered, to wit, in a certain written declaration, certificate and statement to the Alien Property Custodian hereinafter more particularly described, that the said written declaration, certificate and statement by him subscribed was true, contrary to such oath did state and subscribe certain material matter which he then and there did not believe to be true, that is to say, that said Edward A. Rumely, on the day aforesaid, at the County of New York, within the District aforesaid, did make to the Alien Property Custodian a certain written declaration, certificate and statement, wherein it was stated and set forth among other things that the said Edward A. Rumely then and on the 3rd day of February, 1917 was indebted to a certain enemy or ally of
394 enemy or to a person whom he had reasonable cause to believe to be an enemy or ally of enemy, to wit, one Herman Sielcken, a citizen of the United States of America, and did subscribe o the said written declaration, certificate and statement, and did take his oath before the said John M. Lowrie, that the said declaration, ertificate and statement by him subscribed was true; in which said leclaration, certificate and statement it was a material matter whether r not on the 3rd day of February, 1917, the said Edward A. Rumely as in any way indebted to any person other than the said Herman Sielcken who was an enemy or ally of enemy, or whom he might ave reasonable cause to believe to be an enemy or ally of enemy, and ad not made a report of such debt to the Alien Property Custodian; n which said declaration, certificate and statement, the said Edward . Rumely did declare, certify and state falsely among other things n substance and to the effect that on the said 3rd day of February, 917, the said Edward A. Rumely was not in any way indebted to ny person other than the said Herman Sielcken who was an enemy r ally of enemy, or whom he might have reasonable cause to believe be an enemy or ally of enemy, of which debt he had not made report to the Alien Property Custodian; whereas, in truth and in ct, it was not and is not true, and at the time of so declaring, certiing and stating the said Edward A. Rumely did not believe it to true, that on the 3rd day of February, 1917, the said Edward A. umely was not in any way indebted to any person other than the id Herman Sielcken who was an enemy or ally of enemy, or whom might have reasonable cause to believe to be an enemy or ally of emy, of which debt he had not made a report to the Alien Property stodian;

395 And the Grand Jurors aforesaid, on their oath aforesaid do further present that with respect to the aforesaid materia matter, the true facts are and were that on the 3rd day of February 1917, the said Edward A. Rumely was indebted to the Imperial Ger man Government, one Johann von Bernstorff, who was then and there the Ambassador of the said Imperial German Government to the United States, and acting as such, and one Heinrich F. Albert who was then and there the Commercial Attaché of said Imperia German Government in the United States and acting as such, in the sum of $1,301,700, or thereabouts, of which said debt the said Edward A. Rumely had not made a report to the Alien Property Custodian.

And as the Grand Jurors aforesaid, on their oath aforesaid, do say that the said Edward A. Rumely on the day aforesaid at the Southern District of New York, and within the jurisdiction of this Court, in manner and form as aforesaid, committed wilful and corrupt per jury; against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided. (Section 125 U. S. C. C.)

FRANCIS G. CAFFEY,
United States Attorney.

396 [Endorsed:] U. S. District Court. The United States of America vs. Edward A. Rumely. Indictment, Perjury, Sec 125 U. S. C. C. Francis G. Caffey, U. S. Attorney.

397 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, Alexander Gilchrist, Jr., Clerk of the District Court of the United States for the Southern District of New York, do hereby Certify that the Writings annexed to this Certificate have been com pared by me with their originals on file and remaining of record in my office; that they are correct transcripts therefrom and of the whole of the said originals.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said Court at the City of New York, in the Southern District of New York, this 13th day of December, in the year of our Lord one thousand nine hundred and eighteen, and of the Independence of the said United States the one hundred and forty-third.

[SEAL.] (Signed) ALEX. GILCHRIST, JR., *Clerk.*

398 DEFT. EX. D.

A. P. C. Form No. 100.

File No. —.

Alien Property Custodian.

Report of Property and Indebtedness Under Section 7 (a), Trading With the Enemy Act (General).

Penalty.

Failure to make this report to the Alien Property Custodian as provided by law (see extract of act below) is punishable by imprisonment for not more than ten years or fine of not more than ten thousand dollars, or both.

The time for the filing of any report which under the act was required to be filed on or before November 5, 1917, has been extended to and including December 5, 1917.

Pursuant to the provisions of section 7(a) of the "Trading with the enemy Act," the Alien Property Custodian hereby requires a written statement under oath containing all the particulars specified in this form.

Instructions.

(1) Read carefully all of this report form, note the grouping of the several classes of property, and read instructions before beginning to make report. Write legibly, using typewriter where possible.

(2) Person.—The word "person" is defined by section 2 of the act as follows:

"The word 'person,' as used herein, shall be deemed to mean an individual, partnership, association, company, or other unincorporated body of individuals, or corporation or body politic."

(3) The person whose property (including indebtedness owing him) must be reported.—Report must be made of the property or of indebtedness to any person who, by the "Trading with the enemy Act," is defined as an enemy or ally of enemy or whom the person making this report may have reasonable cause to believe to be an enemy or ally of enemy.

(4) Enemy.—For the purpose of this report, the word "enemy," as defined by section 2 of the act, includes the following:

"(a) Any individual, partnership, or other body of individuals, of any nationality, resident within the territory (including that occupied by the military and naval forces) of any nation with which the United States is at war, or resident outside the United States and doing business within such territory, and any corporation incorporated within such territory of any nation with which the United

States is at war or incorporated within any country other than the United States and doing business within such territory.

"(*b*) The government of any nation with which the United States is at war, or any political or municipal subdivision thereof, or any officer, official, agent, or agency thereof."

Ally of enemy.—For the purpose of this report, the words "ally of enemy," as defined by section 2 of the act, include the following:

"(*a*) Any individual, partnership, or other body of individuals, of any nationality, resident within the territory (including that occupied by the military and naval forces) of any nation which is an ally of a nation with which the United States is at war, or resident outside the United States and doing business within such territory, and any corporation incorporated within such territory of such ally nation, or incorporated within any country other than the United States and doing business within such territory.

"(*b*) The government of any nation which is an ally of a nation with which the United States is at war, or any political or municipal subdivision of such ally nation, or any officer, official, agent, or agency thereof."

(5) If a person, even an American citizen, is resident within the territory of an enemy or ally of enemy, including that occupied by its military and naval forces, his property must be reported.

(6) The term "enemy" or "ally of enemy," as used in this form, includes any person whom you may have reasonable cause to believe to be an enemy or ally of enemy.

(7) On October 6, 1917, the United States was at war with Germany; the allies of Germany were Austria-Hungary, Bulgaria, and Turkey.

(8) Who must make this report, and what must be reported.—This report must be made by the persons described in the following paragraph of the act:

"Any person in the United States who holds or has or shall hold or have custody or control of any property beneficial or otherwise, alone or jointly with others, of, for, or on behalf of an enemy or ally of enemy, or of any person whom he may have reasonable cause to believe to be an enemy or ally of enemy and any person in the United States who is or shall be indebted in any way to an enemy or ally of enemy, or to any person whom he may have reasonable cause to believe to be an enemy or ally of enemy, shall, with such exceptions and under such rules and regulations as the President shall prescribe, and within thirty days after the passage of this act, or within thirty days after such property shall come within his custody or control, or after such debt shall become due, report the fact to the alien property custodian by written statement under oath containing such particulars as said custodian shall require. The President may also require a similar report of all property so held, of, for, or on behalf of, and of all debts so owed to, any person now defined as an enemy or ally of enemy, on February third, nineteen hundred and seventeen."

The Alien Property Custodian, acting under the authority vested in him by the President, including all power and authority to re-

quire lists and reports, has issued an order requiring a report of all property so held, and of all debts so owed, on February 3, 1917. If on February 3, 1917, the person reporting so held any property of, for, or on behalf of the person named in division B hereof, or was indebted in any way to such person, an additional report as of February 3, 1917, must be made, unless all such property and indebtedness are included in this report.

(9) The following reports, covered by special forms, are not to be included herein:

(*a*) Lists required to be filed by corporations incorporated within the United States, unincorporated associations, companies, or trustees within the United States, issuing shares or certificates representing beneficial interests, as to the enemy or ally of enemy officers, directors, or stockholders thereof. (A. P. C. Form No. 101.)

(*b*) Reports by insurance companies as to all policies of insurance of value, in which an enemy or ally of enemy has any interest. (A. P. C. Form No. 102.)

(*c*) Reports by banking institutions having no property on hand of an enemy or ally of enemy or owing no debt to an enemy or ally of enemy, except an open bank account. (A. P. C. Form No. 103.)

(*d*) Reports by corporations or persons leasing safe deposit boxes to enemy or ally of enemy or to lessees in trust for enemy or ally of enemy and to which the lessors have not access. (A. P. C. Form No. 104.)

(*e*) Executors, administrators, guardians, trustees, receivers, and others acting in a like fiduciary or representative capacity, in respect of property in which an enemy or ally of enemy has an interest. (A. P. C. Form No. 105.)

399 (10) Miscellaneous.—Make separate reports on separate blanks for each person whose property (including indebtedness owing him) is being reported.

(11) Do not leave any schedule or question unanswered. If a negative answer is intended, write "None" or "No."

(12) If the space provided in any schedule in this form is inadequate, a complete schedule in like form and bearing the corresponding schedule number must be prepared, signed, attached to this report, and made a part hereof. Do not put a part of the information in the space on this form and part on an attached sheet.

(13) If the person making the report holds any of the property mentioned in any of the schedules jointly with others, this fact must be stated in such schedules, with the names and addresses of the joint holders or custodians. Persons holding property jointly may report jointly.

To Alien Property Custodian, Washington, D. C.:

The undersigned, in pursuance of the act of Congress known as the "Trading with the enemy Act," approved October 6, 1917, hereby makes the following written statement containing the particulars required by the Alien Property Custodian (except as reported on special forms) of all the property, beneficial or otherwise,

which the undersigned on October 6, 1917, held, had, or had custod or control of, or now holds, has, or has custody or control of, alon or jointly with others, of, for, or on behalf of the herein-name enemy or ally of enemy, or person whom the undersigned may hav reasonable cause to believe to be an enemy or ally of enemy; an of all indebtedness owing on or after October 6, 1917, by the unde signed to such enemy or ally of enemy or person whom the unde signed may have reasonable cause to believe to be an enemy or all of enemy, to wit:

A.

Name of individual, partnership, association, or corporation mal ing report; Edward A. Rumely.

Address: 324 W. 103rd St., New York, N. Y., N. Y.
(No.) (Street.) (City.) (County.) (State.)

B.

Name of enemy or ally of enemy or person whom person repor ing may have reasonable cause to believe to be an enemy or ally o enemy whose property (including indebtedness owing him) is bein reported: Herman Sielcken.

Last known residence or address Baden Baden, Germany.

(Give the residence or address of the person whose property i being reported, as the same is registered or recorded on the book of the person reporting, together with any information showing an subsequent change of residence or address.)

Of what country (if known to person reporting) is person whos property is being reported a subject or citizen? United States o America.

Schedule 1.

Money, Checks, and Drafts Payable on Demand.

This schedule includes gold, silver, currency, checks, and draft payable on demand. (Time drafts and bank accounts should b included under Schedule 8.)

Money, $ None.

Give detailed description, date, bank, drawer or maker, payee endorser, number of check and amount, place of payment, and th capacity in which the same is held. If any check or draft schedule is for any reason worth less than its par value, this fact should b stated in this schedule.

Checks, None.

Drafts payable on demand, None.

400 Schedule 2.

Stocks and Bonds.

This schedule includes financial securities, such as certificates of stock, issues of notes and debentures of corporations, associations, companies, or trustees, including certificates representing beneficial interests; bonds and coupons of corporations, countries, states, counties, cities, and subdivisions thereof; and all financial securities commonly dealt in by bankers, brokers, and investment houses.

(The list of officers, directors, and stockholders of corporations and unincorporated associations or companies or trustees issuing shares or certificates representing beneficial interests, required by the first two paragraphs of section 7 (*a*) of "Trading with the enemy Act," should be made on a separate form (A. P. C. Form No. 101), which will be furnished on request, and the list there called for should not be included in this report.)

Give in detail name of the corporation or person issuing stock, shares, or certificates representing beneficial interests, bonds, or securities, and class or issue thereof, record or registered owner, par value or principal amount of same, number of shares (if any), and serial numbers of all instruments; state where the same are located, and estimated market value of each item. None.

Schedule 3.

Equity of Enemy or Ally of Enemy in Mortgaged or Pledged Property and Interest of Enemy or Ally of Enemy in Contracts Mentioned in Section 8 (*a*).

This schedule includes the property and contracts mentioned in section 8 (*a*) of "Trading with the enemy Act," which provides: "That any person not an enemy or ally of enemy holding a lawful mortgage, pledge, or lien, or other right in the nature of security in property of an enemy or ally of enemy which, by law or by the terms of the instrument creating such mortgage, pledge, or lien, or right, may be disposed of on notice or presentation or demand, and any person not an enemy or ally of enemy who is a party to any lawful contract with an enemy, or ally of enemy, the terms of which provide for a termination thereof upon notice or for acceleration of maturity on presentation or demand, may continue to hold said property, and, after default, may dispose of the property in accordance with law or may terminate or mature such contract by notice or presentation or demand served or made on the alien property custodian in accordance with the law and the terms of such instrument or contract and under such rules and regulations as the President shall prescribe; and such notice and such presentation and demand shall have, in all respects, the same force and effect as if duly served or made upon the enemy or ally of enemy personally."

Describe in detail each item; the nature, value, and location of the

property; the nature, amount, and maturity of indebtedness; give d
of all instruments, amounts, due dates and parties to the same;
attach copies of all contracts described in section 8 (*a*) and of all
struments, if any, creating the mortgage, pledge, lien, or other ri
in the nature of security in property; and state estimated value
equity of enemy or ally of enemy therein. None.

Schedule 4.

Warehouse Receipts and Bills of Lading.

This schedule includes warehouse receipts, bills of lading issued
any carrier, trust receipts, bills of sale, and other evidences of the t
or ownership of tangible personal property not in the actual pos
sion of the person reporting.

Give in detail date of instrument, name of person issuing the sa
description, location, and estimated market value of the prope
covered, and nature of interest in instrument or property of per
named in Division B hereof. None.

401 Schedule 5.

Goods and Merchandise.

This schedule includes goods, wares, merchandise, chattels, sto
on hand, and tangible personal property in the custody or cont
of the person reporting, not included in any of the preceding sch
ules of this report; also ships, or interests in ships, and goods on shi
in which the person named in Division B hereof has any interest

Describe in detail the property, quantity, location, and the e
mated market value thereof. None.

Schedule 6.

Real Estate Mortgages.

This schedule includes all real estate mortgages where the obli
tion is held by an enemy or ally of enemy and is secured on spec
real estate; all vendors' sales agreements and all land contracts wh
enemy or ally of enemy is vendor and purchase price of real est
sold by enemy or ally of enemy remains unpaid in whole or in part.

Give full description of indebtedness secured by any mortgage
deed of trust on real estate, together with description of property
which indebtedness is a lien; give amount and maturity of inde
edness, interest payment dates, rate of interest and copies of all v
dors' sales agreements or land contracts, together with statement
amount due and unpaid thereon by purchaser. Also give estimat
market value of mortgage and real estate. None.

Schedule 7.

Real Estate.

This schedule includes real estate, leaseholds, ground rents, options, and contracts relating to real estate, together with rents accrued or to accrue.

Give description of real estate, location, grantor and grantee in deed or other instrument, date of instrument and where recorded; estate held, whether fee simple or otherwise; description of improvements, estimated market value of land and improvements separately; amount of encumbrances, and probable annual net income; names and addresses of tenants, name and address of agent collecting rents; rents accrued and to accrue. None.

402

Schedule 8.

Negotiable Instruments and Debts.

This schedule includes all indebtedness of persons making this report to person named in Division B hereof; and all evidences of debt not included in any of the preceding schedules of this report, such as promissory notes, bills of exchange, time drafts, certificates of deposit, bank accounts or deposits, trade acceptances, royalties (other than royalties on patents, trademarks or copyrights), book accounts, accounts payable, judgments, contracts and any debt or obligation not of the character hereinbefore scheduled, in the custody or control of the person making this report, in which the person named in Division B hereof has or may have an interest. All debts, whether due or not, must be reported. Any unpaid instrument owing by you, which to your knowledge was at any time payable to or held by the person named in Division B hereof, must be reported, together with the name and address of present payee or holder, if known.

(1) Describe in detail each item of indebtedness of person reporting, to person named in Division B hereof. Give date of any instruments evidencing such debt or debts, together with date of maturity, rate of interest, date to which interest is paid, place of payment, principal amount unpaid and estimated value thereof. State names of joint makers, if any, and name all parties to instruments or obligations, and if indebtedness is secured in any way, describe the security and state its estimated value. Note for $100,000.00, dated September 14th, 1917, payable at National City Bank of New York, two years after date, maker Edward A. Rumely, no amount of principal has been paid. Note does not bear interest. Note is to the order of Herman Sielcken.

(2) Describe in detail each evidence of indebtedness held by person reporting, or in his custody or control, of, for, or in behalf of person named in Division B hereof; give nature of same, original principal, amount thereof unpaid, rate of interest and to what date

paid, when principal and interest due, and estimated value thereof; give dates of all instruments, amounts, due dates, and parties to or on the same, together with any security held for the payment of any of the obligations and estimated value thereof. Give name of court and court reference to any judgments, and book and page and office where recorded of any recorded instrument. None.

Schedule 9.

Patents, Trade-marks, and Copyrights.

This schedule includes all indebtedness incurred under agreements existing prior to the enactment of "Trading with the Enemy Act," October 6, 1917, where the holder of the patent, trade-mark, or copyright is the person named in Division B hereof, and does not include sums owing pursuant to any license issued under that act for the use of patents, trade-marks, and copyrights.

Describe the patent, trade-mark, or copyright; give the commonly accepted name thereof, the serial number thereof, and copy of the agreement under which the same is being used, together with a statement of all royalties due or unpaid. None.

403 Schedule 10.

Insurance Policies.

This schedule includes life, fire, accident, marine, and other policies of insurance in which the person named in Division B hereof is the insured or the beneficiary and which policies are in the custody or control of the person reporting. Insurance companies should report on A. P. C. Form No. 102 policies issued by them and they should not include such policies herein. Any debt owing by way of premium upon policies of insurance or reinsurance to the person named in Division B hereof should be reported under Schedule 8 as a debt.

Describe in detail, giving name of company, number of policy, amount thereof, the description and location of the person or property insured, name of the beneficiary, address of the insured and beneficiary if known, amount due on the policy, if any, to person named in Division B hereof, the liens outstanding on the policy, if any, and also whether the policy is in force and whether any arrangement is in existence for the payment of any premium due or to become due thereon. None.

Schedule 11.

Safe Deposit Boxes.

This schedule includes all cases where the person reporting has the custody or control of any safe-deposit box in which, or in any of the contents of which, the person named in Division B hereof has any interest.

Safe-deposit boxes leased by a safe-deposit company or person to emies or allies of enemy or to lessees in trust for enemies or allies enemy and to which the lessors have not access, should be reported A. P. C. Form No. 104.

Give name and address of corporation from which safe-deposit box rented and number and location of the box. The contents of the x in which the person named in Division B hereof has any interest ould be reported in the several appropriate schedules of this re- rt. None.

Schedule 12.

eport in This Schedule All Other Property, Real, Personal, or Mixed, and Assets and claims of Every Kind and Description Not Otherwise Designated in the Foregoing Schedules, and Not Required to Be Separately Reported, in Which the Person Named in Division B Hereof Has or May Have Any Right, Title, or Interest.

List of above property, with full description, location, terms, nounts, and estimated market value of each item. None.

94 The following questions must also be answered by the person making this report:

Did you on February 3, 1917, other than as stated in this report, old, have, or have the custody or control of any property, beneficial otherwise, alone or jointly with others, of, for, or on behalf of e person named in Division B hereof, or were you on February 3, 917, other than as stated in this report, indebted in any way to the erson named in Division B thereof?

Answer. Yes. See Schedule.

Did you on February 3, 1917, hold, have, or have the custody or ntrol of any property, beneficial or otherwise, alone or jointly with hers, of, for, or on behalf of any other person than the one named Division B hereof, who is an enemy or ally of enemy or whom ou may have reasonable cause to believe to be an enemy or ally enemy and of which you have not yet made report to the Alien roperty Custodian, or were you on February 3, 1917, in any way ndebted to such other person and have not made report of such debt the Alien Property Custodian?

Answer. Yes. No.

(If either question is answered in the affirmative, additional forms ill be furnished upon request.)

(Signature of party making report)

EDWARD A. RUMELY.

On February 3, 1917, I owed on behalf of Herman Sielcken, on wo notes, one dated January 24, 1917, for $551,700, and one dated une 1, 1915, for $750,000, both notes bearing interest at five per ent per annum, payable sixty days after demand, which demand as never made, and which notes were cancelled on September 14,

189

1917, and the aforesaid note of September 14, 1917, was substituted in place thereof.

The aforesaid notes of January 24, 1917, and June 1, 1915, were payable either in cash or at the maker's option by put of stock, which in September 1917, had an estimated value of less than one hundred thousand dollars ($100,000).

Affidavit of Individual Making Report.

STATE OF NEW YORK,
County of New York, ss:

I swear (or affirm) that the foregoing report and answers therein made are true and correct.

EDWARD A. RUMELY.

Subscribed and sworn to before me this 4th day of December, 1917.

[SEAL.] JOHN M. LOWRIE,
Notary Public, New York County, No. 305.

Affidavit of Member or Representative of Partnership Making Report.

STATE OF ——,
County of ——, *ss:*

I swear (or affirm) that I am — of the partnership making the foregoing report and that the foregoing report and answers therein made are true and correct.

—— ——.

Subscribed and sworn to before me this — day of ——, 191–.

—— ——.

Affidavit of Officer or Representative of Corporation or Association Making Report.

STATE OF ——,
County of ——, *ss:*

I swear (or affirm) that I am the — of the corporation/association making the foregoing report, and that the foregoing report and answers therein made are true and correct.

—— ——.

Subscribed and sworn to before me this — day of ——, 191–.

—— ——.

405 [Endorsed.]

Report No. —. Trust No. —.

(Do not write on this back, which is to be filled out only in the office of the Alien Property Custodian.)

Alien Property Custodian.

Report of property and Indebtedness under Section 7 (*a*), Trading with the Enemy Act (General).

—— ——, Enemy/ally of Enemy.

—— ——, 191–.

Received and entered in Register of Reports and referred to Director of Bureau of Investigation for report to Bureau of Trusts.

——— ———,
Report Register Clerk, Accounting Section, Division of Accounts.

—— ——, 191–.

Referred to Director of Bureau of Trusts with action of this Bureau attached.

——— ———,
Director, Bureau of Investigation.

(*See footnote.)

—— ——, 191–.

Received and credited to Bureau of Investigation in Register of Reports and referred to Inventory and Appraisal Section.

——— ———,
Report Register Clerk, Accounting Section, Division of Accounts.

(*See footnote.)

—— ——, 191–.

Received and credited to Inventory and Appraisal Section in Register of Reports and held pending receipt of property.

——— ———,
Report Register Clerk, Accounting Section, Division of Accounts.

—— ——, 191–.

Received for final disposition and entered in Register of Reports

—— ——,

Report Register Clerk, Accounting Section, Division of Accounts.

Filed by —— ——.
Date filed —— —, ——.

*NOTE.—Indorsements marked with an asterisk are to be recorded if property herein described is to be demanded, otherwise file and note in final indorsement hereon.

406 DEFENDANT'S EXHIBIT E.

(The following excerpts from this exhibit, which consist of the printed report of the Alien Property Custodian to the President of the United States dated January 1, 1918, and printed as House Document No. 840, contains all of this material in this case.)

"Expense of Administration.

By the Executive Order under date of October 29, 1917, there was allotted to the Alien Property Custodian the sum of $100,000 out of the funds appropriated by the trading-with-the-enemy act, to be expended in the administration of the powers vested in him by law and by the Executive orders hereinbefore mentioned. Out of this allotment the Alien Property Custodian has so far disbursed $52,996.63. On December 8, 1917, the President allotted the sum of $25,000 to the Alien Property Custodian from the appropriation of $100,000,000 for 'national security and defense,' to cover all expense, including rental of quarters outside of the District of Columbia. There has been disbursed out of this allotment the sum of $758.99, making a total disbursement out of both allotments of the appropriation for the two months in which the office of the Alien Property Custodian has been in operation, up to and including December 31, 1917, $53,755.12. Some December bills rendered after that date are, of course, not included. The following statements show the amounts of said allotments, the amount which has been drawn therefrom and placed to the credit of the Alien Property Custodian, and the sum actually disbursed out of said funds, and the expenses for which said disbursements have been made:

407 DEFENDANT'S EXHIBIT F.

(The following excerpts from this exhibit, which consists of a Bulletin of Information issued by the Alien Property Custodian dated June 8, 1918, contain all that is material in this case.)

"In addition to and working in cooperation with the Washington office there is maintained an office at 110 West Forty-second Street,

New York City, which is in charge of a managing director, Mr. Francis P. Garvan, who is also the director of the Bureau of Investigation. At the New York office there are also representatives of the Bureau of Trusts (General Business Department, Mr. J. A. Bower, manager), Bureau of Investigation (Mr. H. L. Gassin, assistant director), and Bureau of Law (Mr. Morgan M. Mann, associated general counsel).

408 DEFENDANT'S EXHIBIT G.

(The following excerpts from this exhibit, which consists of the printed by-laws of the S. S. McClure Newspaper Corporation as amended June 1, 1915, contain all that is material in this case.)

"Section 8. The Vice-President.—At the request of the President, or in his absence or disability, the Vice-President shall perform all the duties of the President. The Vice-President shall be the executive head of the Corporation, control the general and editorial policy of the corporation, and have general supervision over the business and over the several officers of the Corporation, subject, however, to the control of the Board of Directors, and in financial matters of which the Finance Committee has control, he shall also be subject to the control of the Finance Committee. He may also sign with the Secretary or Treasurer, or any other proper officer of the Corporation thereunto authorized by the Board of Directors, any or all certificates of stock of the corporation, and shall perform such other duties as from time to time may be assigned to him by the Board of Directors or the Finance Committee."

409 DEFT.'S EX. H.

New York, June 1, 1915.

For value received the undersigned, Edward A. Rumely (hereinafter sometimes called "the Maker"), hereby promises to pay to Walter Lyon (hereinafter sometimes called "the Holder") thirty (30) days after written demand, the sum of seven hundred and fifty thousand dollars ($750,000), with interest from date at the rate of five per cent. (5%) per annum, payable at the expiration of said thirty days, upon the terms and conditions following:

This note is secured by the pledge of six thousand three hundred and fifty (6,350) shares of the preferred capital stock, and two thousand five hundred and fifty (2,550) shares of the common capital stock, of S. S. McClure Newspaper Corporation, of the aggregate par value of Eight hundred and ninety thousand dollars ($890,000), represented by certificates endorsed in blank, and delivered to the Holder; and in the event that the principal of this note and the interest thereon are not paid thirty days after written demand the title to all of said shares of capital stock then pledged hereunder shall, without further act or deed, vest absolutely in the Holder, and all obligation of the Maker to pay this note and the interest thereon and the loan for which this note was given shall, by such vesting of title

and without further act or deed, be discharged and canceled, and the Holder shall surrender this note to the Maker.

[Written across face:] Cancelled.

At any time prior to the maturity of this note by reason of the failure of the Maker to pay the same, with interest, thirty days after written demand and prior to the vesting of title to the pledged shares in the Holder under any of the provisions hereof, the Maker shall have the right:

410 (*a*) To make partial payments from time to time upon this note, without any right to withdraw any of the stock pledged hereunder, except in the event of his effecting a sale or sales as provided in subdivision (*b*);

(*b*) To sell from time to time preferred stock pledged hereunder, provided, however, that the aggregate amount of all of said sales shall not, without the written consent of the Holder, exceed Three hundred thousand dollars ($300,000) par value, of such preferred stock. In the event that the Maker shall effect a sale or sales of any of the preferred stock pledged under this note as aforesaid, he shall be entitled, as and when such sale or sales are effected, to have released from the lien hereof, and to receive possession of, the preferred stock so sold, upon payment to the Holder of an amount in cash equal to the par value of the preferred stock so sold; provided, however, that the aggregate amount of all of said preferred stock to be released as aforesaid shall not, without the written consent of the Holder, exceed Three Hundred thousand dollars ($300,000), par value, of such preferred stock.

(*c*) Anything in this note to the contrary notwithstanding to pay the full amount due upon this note, with interest, and upon such payment, forthwith to receive all of the stock then pledged under this note and to receive this note from the Holder.

The Maker shall also have the right at any time, on written notice to the Holder to that effect, and without further act or deed, to vest absolutely in the Holder the title to all the shares of stock then pledged for this note, in which event all obligation of the Maker to pay this note and the interest thereon and the loan for which this note was given shall, by such vesting of title and without further act or deed, be discharged and canceled, and the Holder shall surrender this note to the Maker.

Except in the case of the Voting Trust hereinafter referred to, and prior to the vesting of title to the pledged shares in the Holder

411 as herein provided, the pledged shares shall remain in the name of the Maker or may, with the written consent of the Holder, be transferred on the books of the Company to such other name or names as the Maker shall in writing request, provided, however, that by the giving of such consent the Holder shall not be deemed to have relieved the Maker from any of his obligations hereunder.

The Holder shall have the right to vote, at all meetings of the stockholders, any and all shares of preferred stock pledged for this note, so long as they are pledged hereunder, and the Maker shall not,

without the written consent of the Holder, have the right to vote any of said stock. Forthwith upon the execution of this agreement the Maker shall give to the Holder a proxy or proxies, with power of substitution in the Holder, for the purpose of permitting the Holder or his substitute to vote any and all shares of preferred stock from time to time pledged hereunder. Said proxy or proxies shall provide on their face that they are to run for two years and the Maker shall, if so requested in writing by the Holder, renew for like two year periods said proxy or proxies respectively from time to time until payment or other discharge of this note. Each of said renewal proxies shall be given by the Maker, if requested in writing by the Holder, at least thirty days prior to the expiration of the proxy of which it is a renewal. In the event that the Maker shall, after such request, fail to renew any such proxy as aforesaid, or shall, without the written consent of the Holder, revoke any such proxy during the term thereof, all of the shares of capital stock then pledged hereunder shall, without further act or deed, vest absolutely in the Holder, and all obligation of the Maker to pay this note and the in-
412 terest thereon and the loan for which this note was given shall, by such vesting of title and without further act or deed, be discharged and cancelled and the Holder shall surrender this note to the Maker.

Upon payment of this note in full, with interest, or upon the vesting of title to the pledged shares in the Holder under any of the provisions hereof, the Maker shall have the right to revoke any and all proxies heretofore given by him to the Holder in respect of any of the pledged shares.

Upon the vesting of title to the pledged shares in the Holder under any of the provisions hereof, the Holder shall have the right, forthwith and without notice to the Maker, to transfer all of the pledged shares into the name of the Holder or his nominee or nominees.

In the event that S. S. McClure Newspaper Corporation shall redeem any of the preferred shares pledged hereunder or any part of any of said preferred shares, the Maker and Holder shall co-operate in surrendering to the Corporation, and in withdrawing from the pledge hereunder for the purpose of effecting such redemption, the shares so pledged, and in taking all other steps necessary or desirable for such purpose. All cash paid by the Corporation for redeeming said preferred shares or any part of said preferred shares shall be paid to the Holder as partial payments hereon (without any right by the Maker, because of such partial payment, to withdraw any of the stock pledged hereunder except as aforesaid), and any new certificates or scrip issued in lieu of or partly in lieu of the old certificates so surrendered for redemption shall be endorsed in blank by the Maker and shall be delivered to the Holder to be held by him under the terms hereof.

413 The amount of all cash dividends received upon any of the pledged shares shall be paid to the Holder and applied upon the principal of this note, as partial payments hereon, without any right by the Maker, because of such partial payments, to withdraw any of the stock pledged hereunder. All dividends, other than cash

dividends, so received, or certificates of interest in such dividends, issued under the Voting Trust Agreement hereinafter referred to, shall be turned over to the Holder as additional collateral security for this note, and shall not be deemed partial payments hereon.

All common stock pledged hereunder shall be placed in the Voting Trust in the manner provided and on the conditions stated in the Voting Trust Agreement of even date executed simultaneously herewith between Edward A. Rumely et al., parties of the first part, and Edward A. Rumely, S. Walter Kaufmann and Henry L. Stoddard, as Voting Trustees, parties of the second part, reference to which is made as though fully set forth herein. Certificates of interest in said Voting Trust shall be delivered to the Holder in lieu of or in exchange for the certificates of said pledged common stock. Wherever any provisions of this note apply to the shares of common stock pledged hereunder or the certificates therefor, either by specific reference thereto or by general reference to all the stock pledged hereunder or the certificates therefor, such provisions shall be deemed to apply to the shares of common stock pledged hereunder in the hands of the Voting Trustees under said Voting Trust Agreement and to the trust certificates issued by said Voting Trustees against such shares.

Neither the Maker nor the Holder shall assign any of his respective rights or interests under this note without the written consent of the other party hereto, except as herein otherwise expressly pro-
414 vided.

All written notices herein provided to be given by the Maker to the Holder shall, in the case of Walter Lyon, be delivered at his office at No. 33 New Street, Borough of Manhattan, City of New York, and all written notices or demands herein provided to be given by the Holder to the Maker shall be delivered at such place in the City of New York as the Maker shall from time to time designate in writing.

EDWARD A. RUMELY.

In the presence of—
FREDERICK J. POWELL.

I hereby accept this note on the above terms and conditions and agree to be bound thereby.

WALTER LYON.

In the presence of—
T. RAYMOND ST. JOHN.

415 DEFENDANT'S EXHIBIT I.

Government's Exhibit 5.

This exhibit consists of a note of Edward A. Rumely to Walter Lyon dated January 4, 1917 for the principal amount of $551,700. It is secured by pledge of 2,160 shares of the preferred capital stock and 3,357 shares of the common capital stock of the S. S. McClure Newspaper Corporation. In other respects it is similar in tenor to

the note of June 1, 1915, (Defendant's Exhibit H, Government's Exhibit 4.)

416 DEFENDANT'S EXHIBIT J.

Government's Exhibit 7.

This exhibit consists of a note of Edward A. Rumely to Walter Lyon dated April 19, 1917 for the principal amount of $50,000. It is secured by pledge of 250 shares of the preferred capital stock and 250 shares of the common capital stock of the S. S. McClure Newspaper Corporation. In other respects it is similar in tenor to the note of June 1, 1915, (Defendant's Exhibit H, Government's Exhibit 4.)

417 DEFENDANT'S EXHIBIT K.

Government's Exhibit 6.

This exhibit consists of a note of Edward A. Rumely to Walter Lyon dated February 20, 1917 for the principal amount of $100,000. It is secured by pledge of 500 shares of the preferred capital stock and 500 shares of the common capital stock of the S. S. McClure Newspaper Corporation. In other respects it is similar in tenor to the note of June 1, 1915, (Defendant's Exhibit H, Government's Exhibit 4.)

418 DEFENDANT'S EXHIBITS L, M, AND N.

It is stipulated by counsel for the parties that these exhibits which consist of leases from the James McCreery Realty Corporation to the Alien Property Custodian covering certain parts of the premises known as 110 West 42nd Street are sufficiently described in the minutes before the Commissioner and that they need not be printed in the Record.

419 DEFENDANT'S EXHIBIT O.

Receipts, 1917.

Dec.	7.	M. & E. Co., on account	$85.13
	10.	" "	26.83
	13.	" "	54.60
	17.	" "	700.00
	19.	" "	26.83
	20.	" "	53.00
	27.	" "	43.63
	31.	" "	26.00
	31.	" "	32.20
	4.	Nat. Pk. Bk., M. & E. Note, Endorsed by McClure N. Corp.	11,940.00
	7.	" "	4,973.17
	12.	" "	10,445.40
	14.	" "	4,973.17
	18.	" "	9,948.00
	21.	" "	7,957.07
	26.	" "	4,974.00
	28.	" "	5,967.80
	31.	" "	5,968.80
	3.	M. & E., Liberty Loan	428.00
	5.	" "	345.00
	10.	" "	351.00
	12.	" "	366.00
	14.	" "	54.00
	17.	" "	573.00
	20.	" "	336.00
	24.	" "	1,815.00
	28.	" "	132.00
	31.	" "	339.00
			$72,933.63

Disbursements.

Dec.	4.	M. & E. Co.	12,000.00
	7.	"	5,000.00
	12.	"	10,500.00
	14.	"	5,000.00
	18.	"	10,000.00
	18.	E. A. R. Sal. Dec. 1917	250.00
	18.	Larke	410.00
	21.	M. & E. Co.	8,000.00
	26.	"	5,000.00
	28.	"	6,000.00
	31.	"	6,000.00

1.	Liberty Bond M. & E. Co.	.....	50.00
13.	"	.....	150.00
14.	"	.....	100.00
14.	"	.....	100.00
17.	"	.....	1,884.00
17.	"	.....	250.00
17.	"	.....	50.00
24.	"	.....	1,741.00
26.	"	.....	1,000.00
28.	"	.....	200.00
			73,685.00

420 GOVERNMENT'S EXHIBIT 1.

This exhibit consists of a copy of the indictment returned against the defendant by the Grand Jury for the District of Columbia, a copy of which is attached to the defendant's petition for Writs of Habeas Corpus and Certiorari as Exhibit "B."

421 GOVERNMENT'S EXHIBIT 2.

This exhibit consists of a copy of the report made by the defendant to the Alien Property Custodian dated Dec. 4, 1917 and is identical with Defendant's Exhibit D.

422 GOVERNMENT'S EXHIBIT 3.

It is stipulated by the counsel for the parties that this exhibit which consists of a letter addressed by Edward A. Rumely to A. Mitchell Palmer transmitting his report (Defendant's Exhibit D, Government's Exhibit 2) and the report of one S. Walter Kaufmann need not be printed in the record.

423 GOVERNMENT'S EXHIBITS 4, 5, 6, & 7.

These exhibits consist of notes of Edward A. Rumely to Walter Lyon and are duplicate originals of the notes introduced by defendant as Defendant's Exhibits H, I, J and K, respectively.

424 THE GOVERNMENT'S EXHIBITS 8 AND 9.

These exhibits consist of copies of the Certificate of Incorporation of the S. S. McClure Newspaper Corporation and of the Amended Certificate of Incorporation of said corporation, respectively.

Article Second of these exhibits, identical in both exhibits, specifying the purposes and powers of said corporation, contains all that is material in this case. Said article is as follows:

"Second. The purposes for which it is formed are:

(a) To carry on the business of preparing for publication, printing, engraving, electrotyping, lithographing and otherwise manu-

facturing, binding, publishing, buying, selling, distributing and generally dealing in newspapers, pamphlets, books, pictures, music, maps, advertising matter and publications of all kinds and descriptions and generally to carry on the business of publishers, job and book printers, binders, stationers, advertisers, engravers, lithographers, and electrotypers.

(*b*) To organize and operate syndicates and agencies for the syndicating and distributing of news, articles and any and all matters for publication, and to carry on the business of buying or otherwise acquiring and selling, licensing or otherwise disposing of and generally dealing in literary property of every kind and description and of any rights in or to such property and all materials, properties and accessories necessary or suitable for use in conjunction therewith.

(*c*) To apply for, obtain, register, purchase, lease, or otherwise acquire, any patents, inventions, licenses, trade-marks, trade names, copyrights, processes, formulas, and the like, which may seem capable of being used for any of the purposes of the corporation; and to hold, use, exercise, develop, grant licenses in respect of, sell and otherwise turn to account, the same.

(*d*) To acquire by purchase, subscriptions or otherwise, and to hold, sell, assign, transfer, exchange, mortgage, pledge or otherwise dispose of, any shares of the capital stock of, or voting trust certificates for any shares of the capital stock of, or any bonds or other securities or evidences of indebtedness issued or created by, or any claims against, any other corporation or association, organized under the laws of the State of New York or of any other state, territory, district or country and to issue in exchange therefor shares
425 of the capital stock, bonds or other obligations of this corporation; and, while the owner or holder of any such shares of capital stock, voting trust certificates, bonds or other securities or evidences of indebtedness, or claims, to possess and exercise in respect thereof any and all the rights, powers and privileges of individual holders or owners, including the right to vote on any shares of stock so held or owned; and upon a distribution of the assets or a division of the profits of this corporation, to distribute any such shares of capital stock, voting trust certificates, bonds or other securities or evidences of indebtedness, or the proceeds thereof, among the stockholders of this corporation.

(*e*) To borrow or raise moneys for any of the purposes of the corporation, and to issue bonds, debentures, notes or other obligations of any nature, or in any manner, for moneys so borrowed, or for property acquired or for any of the purposes of the corporation, and to secure the payment thereof and of the interest thereon, by mortgage upon or pledge or conveyance or assignment in trust of, the whole or any part of the property of the corporation, real or personal, whether at the time owned or thereafter acquired; and to sell or pledge or discount such bonds or other obligations of the corporation for its corporate purposes.

(*f*) To guarantee the payment of dividends upon any shares of the capital stock of, or the performance of any contract by, any other

corporation or association, any bonds or evidences of indebtedness or other securities of which, or shares of stock in which, are held by or for this corporation, or in which this corporation has an interest, and to endorse or otherwise guarantee the payment of the principal and interest, or either, of any bonds, debentures, notes, securities or other evidences of indebtedness created or issued by any such other corporation or association, and to aid in any manner by loan, guaranty, subsidy or otherwise any such other corporation or association, and to do any acts or things designed to protect, preserve, improve or enhance the value of any shares of stock, bonds or evidences of indebtedness or other securities of such other corporation or association held by or for this corporation, in so far as these powers may lawfully be exercised by a corporation organized under the Business Corporations Law.

(*g*) To erect, construct, or otherwise acquire, or obtain the use of, improve and operate any and all buildings, factories, plants and the like suitable or convenient for the carrying on of any of the purposes and objects of the corporation, and to acquire (by purchase, exchange, lease, hire or otherwise), own, hold, develop, operate, sell, assign, transfer, exchange, mortgage, pledge or otherwise dispose of, or
426 turn to account, and convey, real and personal property of every kind and nature suitable and convenient for such purposes and objects.

(*h*) To carry out all or any of the foregoing purposes and objects as principal, factor, agent, contractor or otherwise, either alone or in conjunction with any person, firm, association or corporation; and, in carrying on its business and for the purpose of attaining or furthering any of said purpose- and objects, to make and perform any contracts, and to do any acts and things necessary, suitable, convenient or proper for the accomplishment of any of the purposes or the attainment of any one or more of the objects herein enumerated or incidental to the powers herein specified, or which shall at any time appear conducive to or expedient for the accomplishment of any of the purposes or for the attainment of any of the objects hereinbefore enumerated, if not inconsistent with the laws of the State of New York.

(*i*) To carry out all or any part of the aforesaid purposes and objects and to conduct its business in all its branches at one or more places in the State of New York, and, in so far as may be permitted by law, in all other states, territories, districts, colonies and dependencies of the United States of America and in all foreign countries.

It is the intention that the purposes specified in the foregoing clauses of this article Second, shall, except where otherwise expressed in said article, be in no wise limited or restricted by reference to or inference from the terms of any other clause of this or any other article in this certificate, but that the purposes specified in each of the clauses of this article shall be regarded as independent purposes. It is also the intention that the foregoing clauses shall be construed both as purposes and powers and the foregoing enumeration of specific powers shall not be held to limit or restrict in any manner the

general powers which the corporation may have under the present or future laws of the State of New York."

427 United States District Court, Southern District of New York.

EDWARD A. RUMELY, Petitioner,

vs.

THOMAS D. MCCARTHY, United States Marshal in and for the Southern District of New York, and Samuel D. Hitchcock, United State Commissioner for the Southern District of New York, Respondents.

Powell, Wynne, Lowrie & Ruch (Frederick J. Powell, of counsel), all of New York City, for defendant-petitioner:

Francis G. Caffey, United States Attorney, Harold Harper, Assistant United States Attorney, and Bolitha J. Laws, Special Assistant to the United States Attorney, for the District of Columbia, for respondents.

MAYER, *District Judge:*

Rumely is before this court on a writ of habeas corpus in a removal proceeding, the Grand Jury of the District of Columbia having returned an indictment (hereinafter called the Washington indictment) against him. Coincidently there is a writ of certiorari directed to the United States Commissioner to produce the
428 record of the proceedings before him. A statement of the essential facts is necessary in order to make clear the questions of law presented.

The Washington indictment made a prima facie case (Hyde v. Shine, 199 U. S. 62, Haas v. Henkel, 216 U. S. 462), and no testimony bearing upon this issue was introduced. It must, therefore, for the purposes of this proceeding, be taken as true that

(1) On October 6, 1917, Rumely had stock of the S. S. McClure Newspaper Corporation that he held for and on behalf of the German Government, and that during the period from October 6, 1917, to December 20, 1917, the day to which the President extended the time for making reports, Rumely did not report the fact to the Alien Property Custodian, and that

(2) On October 6, 1917, Rumely was indebted to the German Government in the sum of $1,451,700.00, and that during the period aforesaid he did not report that fact to the Alien Property Custodian.

Prior to the finding of the Washington indictment, viz: on July 8, 1918, Rumely had been arrested and arraigned before United States Commissioner Hitchcock, in this District, upon charges which later were embodied, in substance, in two indictments (hereinafter called the New York indictments) returned by the Grand
429 Jury of the Southern District of New York on August 2, 1918.

These indictments were excluded by the Commissioner on the

ground that they charge offenses different from what is set forth in the Washington indictment.

This was error for the reason that the committing magistrate and the court should have before them the entire situation, so as to be able to pass on all the questions which go to the rights of defendant in this proceeding. The New York indictments will, therefore, be discussed as in evidence.

There is no dispute that (generally speaking) both the New York and Washington indictments grow out of the same transactions but, as will presently appear, one of these indictments must be essentially different as to the facts and law and the other, in any event, as to the law. One of the New York indictments, in substance, charges Rumely and one Kaufman with conspiracy to omit to report to the Alien Property Custodian certain facts as to enemy owned property. The details need not be recited. It is obvious that this conspiracy indictment charges an offense entirely different from that charged in the Washington indictment and will need proof at least in addition to that required in the Washington indictment.

The other New York indictment charges Rumely alone with perjury. It contains three counts which, in one form or
430 another, in substance, charge Rumely with making a false report to the Alien Property Custodian.

It might be variously argued that the crime alleged was committed in New York or in Washington—I do not pass upon the point—but, in any event, the proof necessary to establish perjury may be different from that necessary to prove failure to report in accordance with the statutory requirement and the punishment for the respective crime is different. It cannot be held, therefore, that the New York perjury indictment and the Washington indictment are for the same offense, even though they arise out of substantially the same state of facts.

The first inquiry, therefore, is whether the Supreme Court of the District of Columbia had jurisdiction of the offenses charged in the Washington indictment. The United States Attorney contends that that court had exclusive jurisdiction and this contention is vigorously opposed by defendant.

At the outset, however, defendant insists that the act under which it is asserted he was required to report, is unconstitutional, not as such, but as to this defendant, because of the circumstances in which defendant would have been placed if he had reported the facts to the Alien Property Custodian as the statute requires.

The argument is (1) that as defendant, for the purposes of
431 this proceeding, has not controverted the allegations of the Washington indictment, it follows that defendant was guilty of trading with and for the enemy in violation of Section 3 of the Trading with the Enemy Act, and (2) that, therefore, the compulsory disclosure of the facts alleged in the indictment would violate the rights of defendant under the Fifth Amendment as it would compel him to be a witness against himself.

It is clear that at least since Henry v. Henkel, 235 U. S. 219,

habeas corpus cannot be the medium for preliminarily considering so important a constitutional question affecting not merely this defendant, but having possible widespread application, unless, as the Supreme Court said: the case was one of "those rare and extreme cases in which the act was plainly and palpably void."

Therefore, under Henry v. Henkel, supra, this contention must be laid aside without further consideration.

The "Trading with the enemy Act" provides (section 7 (*a*) in part):

"Any person in the United States who holds or has or shall hold or have custody or control of any property beneficial or otherwise, alone or jointly with others, of, for, or on behalf of an enemy or ally of enemy, or of any person whom he may have reasonable cause to believe to be an enemy or ally of enemy and any person, in the United States who is or shall be indebted in any way to an enemy or ally of enemy, or to any person whom he may have reasonable cause to believe to be an enemy or ally of enemy, shall, with such exceptions and under such rules and regulations as the President shall prescribe, and within thirty days after the passage of this
432 Act, or *within thirty days after the passage of this Act, or* within thirty days after such property shall come within his custody or control, or after such debt shall become due, report the fact to the Alien Property Custodian by written statement under oath containing such particulars as said Custodian shall require. The President may also require a similar report of all property so held, of, for, or on behalf of, and of all debts so owed to, any person now defined as an enemy or ally of enemy, on February 3, 1917; provided, That the name of any person shall be stricken from the said report by the Alien Property Custodian, either temporarily or permanently, when he shall be satisfied that such person is not an enemy or ally of enemy. The President may extend the time for filing the lists or reports required by this section for an additional period not exceeding ninety days."

Assuming, for the purpose of discussion, that Rumely failed "to report the fact to the Alien Property Custodian" the first question is, where on the statute and the facts such failure took place.

In United States v. Lombardo, 241 U. S. 73, the statute required that certain persons should "file" a statement in writing with the Commissioner General of Immigration whose office was in the District of Columbia. It was held, in effect, that the place of filing determined the venue in the case of a failure to file. There was some discussion as to the meaning of the word "file" but that was only on the point as to when a paper is filed, the Court observing that "a paper is filed when it is delivered to the proper official and by him received and filed."

To the same effect is New York Central & H. R. R. Co. v. United States, 166 F. R. 267.

It is plain, therefore, for reasons unnecessary to elaborate
433 because so clearly stated in the two cases, supra, that it was defendant's duty to report to the Alien Property Custodian wherever his office was.

The Act did not confine the locus of the office of the Alien Property Custodian to Washington and undoubtedly there was authority to designate any place in the United States where the report could be made, but up to December 20, 1917, nothing had been done by the President or the Alien Property Custodian in the way of establishing or designating a place or office outside of Washington, D. C., where reports could be made. This is the finding of fact by the Commissioner, supported by competent testimony, which will not be reviewed on habeas corpus but, even if examined into, it will be found that the Commissioner was right.

Up to December 20, 1917, when Rumely's offense was complete, the office of the Alien Property Custodian was at Washington, D. C., and that was clearly the place where the Alien Property Custodian was and had his official being.

Therefore, the court in the District of Columbia has exclusive jurisdiction because there and here only was the crime committed.

The fact that it is charged in the New York indictments that Rumely reported falsely does not absolve him for failure to
34 "report the fact." If, for the purpose of the argument, it is assumed that one crime (i. e. perjury) was committed because of an affirmative act, obviously the commission of such a crime does not relieve a defendant of his responsiblity for an act of omission, i. e., failure to perform a duty laid upon him by statute.

Finally, the court is asked to exercise its discretion to the end, in any event, that Rumely may be detained here until the New York indictments are disposed of.

In re Johnson, 167 U. S. 120;
Beavers v. Haubert, 198 U. S. 77;
Haas v. Henkel, 216 U. S. 462.

In other words, this court is asked not to consent to Rumely's removal because the New York indictments were found first and he has retained local counsel who have been engaged in preparing the New York causes for trial and removal to the District of Columbia will entail expense, inconvenience and hardship.

The situation of this defendant is not as strong in some respect as was that of the defendant Haas, in Haas v. Henkel, supra.

If the indictments were for the same offense, the address to discretion might appeal strongly to the court, in whose jurisdiction indictments were first found. In the case at bar, however, the
35 indictments are for different offenses. The court, if it has the power (which point need not be decided) would not, in such circumstances, require the prosecuting officers to elect to proceed on the Washington indictment and abandon the New York indictments, or vice versa.

The questions of jurisdiction require careful consideration and, if one or more crimes have been committed, the court will not require that prosecution must be abandoned in one jurisdiction as a condition of removel to another.

It is but fair, however, in view of the necessary preparation and

the possible employment of new or additional counsel in another jurisdiction, that the prosecuting officers should give defendant reasonable notice as to which indictment or indictments they intend to move first for trial.

To that end some appropriate provision should be inserted in an order dismissing the writ, as a condition of removal. Of course, the prosecuting officers should not be asked to determine which indictment to move first until after defendant shall have finally pleaded to the Washington indictment.

The writ will be dismissed as here indicated. Submit order on one day's notice.

____ ____,
District Judge.

February 3, 1919.

436 At a Stated Term of the District Court of the United States for the Southern District of New York, held in the U. S. Court House and Post Office Building, Borough of Manhattan, City of New York on the 5th day of February, 1919.

Present: Honorable Julius M. Mayer, District Judge.

EDWARD A. RUMELY, Petitioner,

against

THOMAS D. MCCARTHY, United States Marshal for the Southern District of New York, and Samuel M. Hitchcock, United States Commissioner for the Southern District of New York, Respondents.

UNITED STATES OF AMERICA, Plaintiff,

against

EDWARD A. RUMELY, Defendant.

A writ of habeas corpus having issued from this Court on January 18, 1919, to the respondent Thomas D. McCarthy, upon the petition of Edward A. Rumely, above named, verified January 18th, 1919, and alleging that the said Edward A. Rumely was restrained of his liberty by the said respondent Thomas D. McCarthy without authority of law, and a writ of certiorari in aid of said writ of habeas corpus having been issued to the respondent Samuel M. Hitchcock on January 18th, 1919, and the matter having come on to be heard on January 25th, 1919, now on reading and filing the said petition, the return of the respondent Thomas D. McCarthy, verified January 24th, 1919, the return of the respondent Samuel M. Hitchcock, dated January 24th, 1919, and the traverse of the petitioner Edward
437 A. Rumely to the return of said respondent Thomas D. McCarthy, verified January 25th, 1919, and after hearing Frederick J. Powell, Esquire, of counsel for the petitioner in support of said petition and Harold Harper, Esquire, Assistant United States Attorney in opposition thereto, and the United States Attorney having

applied for the issuance of a warrant of removal pursuant to Section 1014 of the Revised Statutes, and due deliberation having been had, it is hereby

Ordered, adjudged and decreed that the said writ of habeas corpus and the said writ of certiorari be, and the same hereby are in all respects dismissed and that the petitioner above named Edward A. Rumely be and he hereby is remanded to the custody of the respondent Thomas D. McCarthy as United States Marshal for the Southern District of New York, and it is

Ordered that a warrant issue forthwith, pursuant to Section 1014 of the Revised Statutes, for the removal of the said Edward A. Rumely to the District of Columbia, and it is

Consented by this Court that such removal be had notwithstanding the pendency of any indictments against the said Edward A. Rumely in this Court, and it is

Ordered that in case the said Edward A. Rumely shall perfect an appeal and cause the transcript of the record herein to be filed in the Court to which said appeal is taken on or before February 21, 1919, then and in that event, execution of the said warrant of removal shall be stayed pending a final determination of said appeal, and it is further

438 Ordered that within thirty days after the said Edward A. Rumely shall have finally pleaded in the District of Columbia, the United States Attorney for the Southern District of New York or the United States Attorney for the District of Columbia shall give to the attorneys or counsel for the petitioner at least two weeks' notice as to which indictment or indictments in either district it is intended to move first for trial. Either party may apply to this Court on three days' notice for a modification of this last paragraph.

JULIUS MAYER,
United States District Judge.

439 [Endorsed:] U. S. District Court, Southern District of New York. Edward A. Rumely, Petitioner, versus Thomas D. McCarthy, United States Marshal for the Southern District of New York, and Samuel M. Hitchcock, United States Commissioner for the Southern District of New York, Respondents. Order. Francis G. Caffey, United States Attorney, Attorney for respondents. To Powell, Wynne, Lowrie & Ruch, Attorney- for petitioner, 165 Broadway, New York City. (Copy.)

440 In the District Court of the United States for the Southern District of New York.

EDWARD A. RUMELY, Petitioner, Appellant,

against

THOMAS D. McCARTHY, United States Marshal in and for the Southern District of New York, and Samuel M. Hitchcock, United States Commissioner for the Southern District of New York, Respondents.

In the Matter of the Petition of EDWARD A. RUMELY for Writs of Habeas Corpus and Certiorari.

The petition of the above named petitioner for an order allowing an appeal to the Supreme Court of the United States from the final order hereinbefore entered in this cause, respectfully shows:

I. That the petitioner and appellant above named is a resident of the City of New York, in the Southern District of New York, United States of America, and was such resident at all of the times hereinafter mentioned.

II. The petitioner and appellant above named feeling himself aggrieved by the final order heretofore made and entered in this Court on the 5th day of February, 1919, whereby it was ordered that the application for a writ of habeas corpus directed to Thomas D. McCarthy, United States Marshal in and for the Southern District of New York, requiring said Marshal to bring and have your petitioner before this Court and that his application for writ of certiorari directed to the Hon. Samuel M. Hitchcock, United States
441 Commissioner for the Southern District of New York, commanding him to return all proceedings against your petitioner to the said District Court for the Southern District of New York for such action as might be proper in the premises, being denied, your petitioner's writ of habeas corpus discharged and your petitioner remanded,

Now comes by Powell, Wynne, Lowrie & Ruch, his solicitors and counsel and petitions the Court for an order allowing him to prosecute an appeal from said final order to the Supreme Court of the United States under and according to the laws of the United States in that behalf made.

III. Your petitioner is advised by counsel that there are grave doubts as to whether the proceedings referred to in the petition have not infringed the constitutional rights of your petitioner, and whether the commitment of your petitioner and the restraint of his person referred to in said petition are not without authority of law, and whether the said United States Commissioner, before whom your petitioner was arraigned, as set forth in said petition, had jurisdiction either to require bail of your petitioner or to commit your petitioner in default thereof, and is further advised by his said counsel that they are of the opinion that your petitioner's consti-

tutional rights have been infringed by the said proceedings and that his detention under and by virtue of the said commitment issued by the said Commissioner, as referred to in the said petition and the denial of his discharge upon said writs of habeas corpus and certiorari in violation of his rights under the Constitution of the United States, and your petitioner desires in good faith to submit the constitutional questions and such other questions as are presented to the Supreme Court of the United States for their determination, and he prays that his appeal may be allowed and that a transcript of the record and proceedings and papers upon which said order
442 was made duly authenticated may be sent to the Supreme Court of the United States and for the relief asked herein your petitioner will ever pray.

Dated, New York, February 5th, 1919.

EDWARD A. RUMELY,
Petitioner.

—— ——,
Attorneys for Petitioner.

Office and Post Office Address, 165 Broadway, Borough of Manhattan, City of New York.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

Edward A. Rumely, being duly sworn, deposes and says; that he has read the foregoing petition and knows the contents thereof; that the same is in all respects true.

EDWARD A. RUMELY.

Sworn to before me, this 5th day of February, 1919.

JULIUS M. MAYER,
U. S. District Judge.

443 The foregoing petition and appeal is granted and it is Further ordered that pending said appeal said defendant, Edward A. Rumely, be released on bail to await the decision and determination of said appeal.

Supersedeas bond fixed at 250.

Dated, New York, February 5, 1919.

JULIUS M. MAYER,
U. S. District Judge.

444 [Endorsed:] M 3—399. In the District Court of the United States, for the Southern District of New York. Edward A. Rumely, Petitioner, Appellant, against Thomas D. McCarthy, United States Marshal in and for the Southern District of New York, and Samuel M. Hitchcock, United States Commissioner for the Southern District of New York, Respondents. (Copy.) Petition for Order Allowing Appeal to Supreme Court. Order.

XVI. In holding that the Trading with the enemy Act required reports under Section 7 (*a*) of said Act to be made in the District of Columbia.

XVII. In holding that the said Trading with the enemy Act required reports under Section 7 (*a*) thereof to be made at the office of the Alien Property Custodian.

XVIII. In holding that Section 7 (*a*) of the Trading with the enemy Act required any report to be made by your petitioner with respect to the facts specified in the said indictment.

XIX. In failing to hold and decide that the enforcement of the said Act as so construed would be in violation of the rights granted your petitioner under the Fifth Amendment of the Constitution of the United States.

XX. In holding that the question as to the infringement of the constitutional rights of your petitioner by the enforcement of
449 said Act as so construed should not be determined in these proceedings.

XXI. In holding that the Supreme Court for the District of Columbia has exclusive jurisdiction of the alleged offenses charged in the indictment.

XXII. In not holding and deciding that your petitioner is deprived of his liberty without due process of law within the meaning of the Fifth Amendment to the Constitution of the United States.

XXIII. In construing Section 1014 of the Revised Statutes as authority for your petitioner's removal to the District of Columbia upon the facts disclosed in the said petition and on the evidence before said Commissioner and before the said Court.

Wherefore, your petitioner prays that the order dismissing said writ of habeas corpus and certiorari and remanding your petitioner to the custody of the United States Marshal be reversed and that your petitioner be discharged from custory.

EDWARD A. RUMELY,
Petitioner.

POWELL, WYNNE, LOWRIE & RUCH,
Attorneys for Petitioner.

Office and Post Office Address, 165 Broadway, Borough of Manhattan, City of New York.

450 [Endorsed:] M 3—399. District Court of the United States, Southern District of New York. Edward A. Rumely, Petitioner-Appellant, against Thomas D. McCarthy, United States Marshal in and for the Southern District of New York, and Samuel M. Hitchcock, United States Commissioner for the Southern District of New York, Respondents. (Copy.) Assignments of Error. Powell, Wynne, Lowrie & Ruch, Attorneys for Petitioner-Appellant. Office and Post Office Address: No. 165 Broadway, Borough of Manhattan, New York City. U. S. District Court, S. D. of N. Y. Filed Feb. 5, 1919. Copy rec'd Feb. 5. Francis G. Caffey.

451 In the Supreme Court of the United States.

EDWARD A. RUMELY, Appellant,

against

THOMAS D. MCCARTHY, United States Marshal in and for the Southern District of New York, and Samuel M. Hitchcock, United States Commissioner for the Southern District of New York, Respondents.

In the Matter of the Petition of EDWARD A. RUMELY for Writs of Habeas Corpus and Certiorari.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the above-named Thomas D. McCarthy, United States Marshal in and for the Southern District of New York, and Samuel M. Hitchcock, Esquire, United States Commissioner for the Southern District of New York:

You and each of you are hereby cited and admonished to be at the Supreme Court of the United States to be holden in the City of Washington in the District of Columbia on the 6th day of March, 1919, pursuant to the appeal duly allowed by the United States District Court for the Southern District of New York, and filed in the Clerk's office of said court on the 5th day of February, 1919, wherein the above-named Edward A. Rumely is appellant and you are appellees, to show cause, if any, why the final order of the said District Court rendered against the said appellant as in said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that respect.

Witness the Honorable Learned Hand, Judge of the District
452 Court of the United States, this 5th day of February, 1919.

JULIUS M. MAYER,
Judge of the District Court
of the United States.

453 [Endorsed:] M 3—399. In the Supreme Court of the United States. Edward A. Rumely, Appellant, against Thomas D. McCarthy, United States Marshal in and for the Southern District of New York, and Samuel M. Hitchcock, United States Commissioner for the Southern District of New York, Respondents. Citation. Powell, Wynne, Lowrie & Ruch, Attorneys for Appellant, Office and Post Office Address: No. 165 Broadway, Borough of Manhattan, New York City. U. S. District Court, S. D. of N. Y. Filed Feb. 5, 1919. Due and timely service of a copy of the within citation is hereby admitted. Francis G. Caffey, Atty. for Resp. February 5, 1919.

454 United States District Court, Southern District of New York.

EDWARD A. RUMELY, Petitioner-Appellant,

against

THOMAS D. MCCARTHY, United States Marshal for the Southern District of New York, and Samuel M. Hitchcock, United States Commissioner for the Southern District of New York, Respondents.

In the Matter of the Application of EDWARD A. RUMELY for Writs of Habeas Corpus and Certiorari.

To the Clerk of the United States District Court for the Southern District of New York:

You will please prepare the transcript of the record in this cause to be filed in the office of the Clerk of the Supreme Court of the United States, under the appeal heretofore perfected to said Court, and include in said transcript the following papers and portions of the record;

(1) Petition of petitioner appellant for Writs of Habeas Corpus and Certiorari, with Exhibits A, B and C.

(2) Writ of Habeas Corpus.

(3) Writ of Certiorari.

(4) Return of United States Marshal to the Writ of Habeas Corpus.

(5) Traverse of return.

(6) Return of the United States Commissioner to the Writ of Certiorari and record of proceedings before said Commissioner.

455 (7) Order discharging Writs of Habeas Corpus and Certiorari and remanding petitioner appellant to the custody of the Marshal.

(8) Opinion of the Court.

(9) Petition of petitioner appellant for appeal from said order to the Supreme Court of the United States and order allowing such appeal.

(10) Assignment of Errors.

(11) Citation.

(12) And this præcipe, with acceptance and stipulation annexed.

Said transcript, which eliminated all papers not necessary to the consideration of the questions to be reviewed, to be prepared as required by law and the rules of the Supreme Court of the United States, and to be filed in the office of the Clerk of the said Supreme Court at Washington, D. C. on or before February 21, 1919.

POWELL, WYNNE, LOWRIE & RUCH,
Attorneys for Edward A. Rumely,
Petitioner-Appellant.

Office and P. O. Address, No. 165 Broadway, Borough of Manhattan, City of New York.

Due and timely service of the above præcipe, and of a copy thereof, is hereby admitted; and it is stipulated that all papers not designated in the above schedule shall be eliminated from the transcript to be prepared on appeal, and that the above designation includes all papers and portions of the record necessary to the consideration of the questions to be reviewed.

Dated New York, February 17, 1919.

FRANCIS G. CAFFEY,
United States Attorney, Southern District of New York, Attorney for Thomas D. McCarthy and Samuel M. Hitchcock, Appellees.

456 [Endorsed:] United States District Court, Southern District of New York. Edward A. Rumely, Petitioner-Appellant, against Thomas D. McCarthy, United States Marshal for the Southern District of New York, and Samuel M. Hitchcock, United States Commissioner for the Southern District of New York, Respondents. (Copy.) Præcipe. Powell, Wynne, Lowrie & Ruch, Attorneys for Petitioner-Appellant. Office and Post Office Address: No. 165 Broadway, Borough of Manhattan, New York City.

457 *Stipulation on Appeal Record.*

UNITED STATES DISTRICT COURT,
Southern District of New York:

EDWARD A. RUMELY, Petitioner-Appellant,

vs.

THOMAS D. MCCARTHY, United States Marshal in and for the Southern District of New York, and Samuel M. Hitchcock, United States Commissioner for the Southern District of New York, Respondents.

It is hereby stipulated and agreed, that the foregoing is a true transcript of the record of the said District Court in the above-entitled matter as agreed on by the parties.

Dated —— —, ——.

POWELL, WYNNE, LOWRIE & RUCH,
Attorneys for Petitioner-Appellant.
FRANCIS G. CAFFEY,
United States Attorney,
Attorney for Attorney for *Respondents.*

458 [Endorsed:] United States District Court, Southern District of New York. Edward A. Rumely, Petitioner-Appellant, vs. Thomas D. McCarthy, United States Marshal in and for the Southern District of New York, and Samuel M. Hitchcock, United States Commissioner for the Southern District of New York, Respondents. Stipulation as to Correctness of Appeal Record. Rec-

ord certified 191–. —— ——, Clerk. —— ——, Attorney for —— ——. Borough of Manhattan, City of New York.

459 UNITED STATES OF AMERICA,
Southern District of New York, ss:

EDWARD A. RUMELY, Petitioner-Appellant,

vs.

THOMAS D. MCCARTHY, United States Marshal in and for the Southern District of New York, and Samuel M. Hitchcock, United States Commissioner for the Southern District of New York, Respondents.

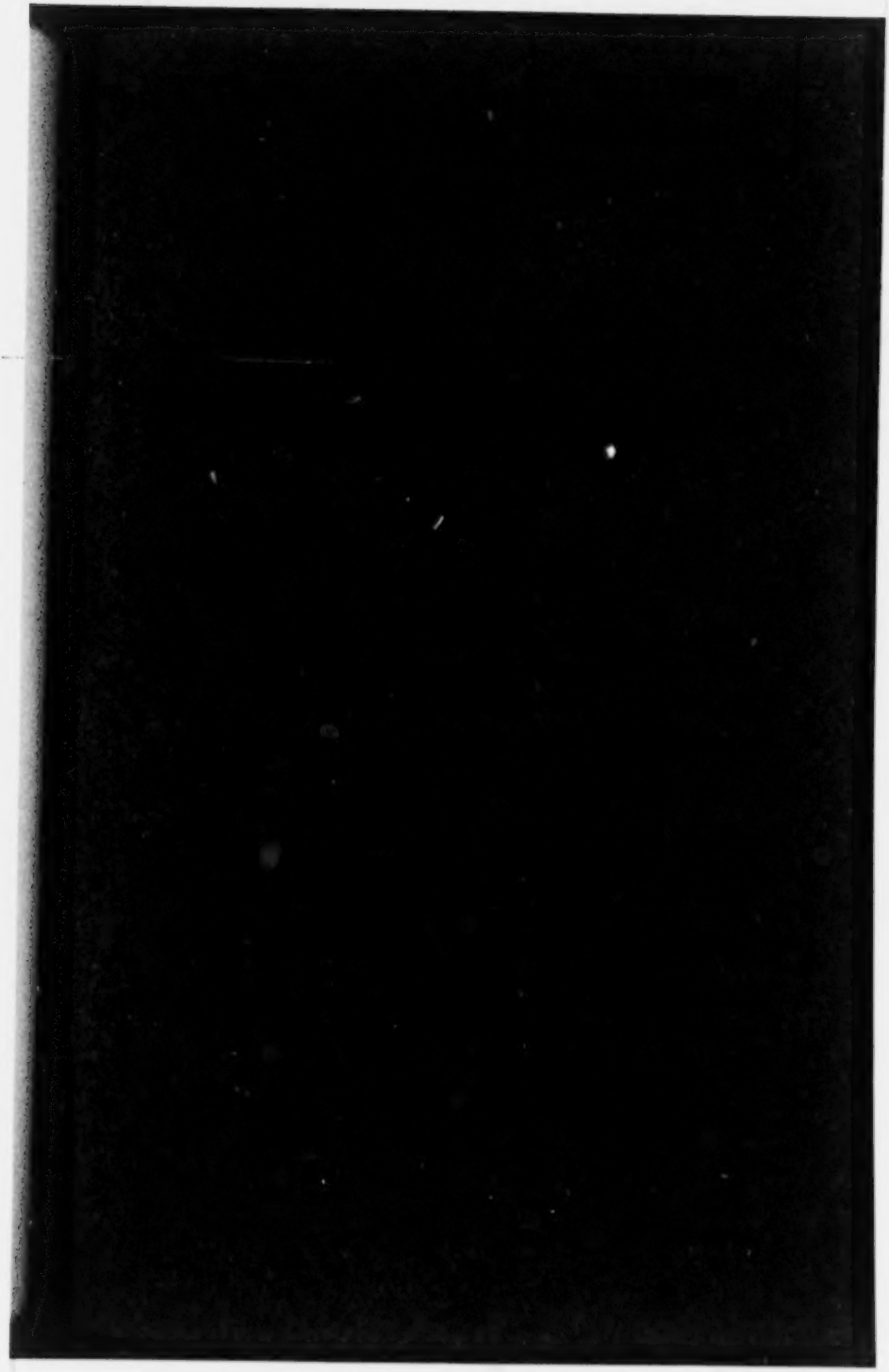
I, Alexander Gilchrist, Jr., Clerk of the District Court of the United States of America for the Southern District of New York, do hereby Certify that the foregoing is a correct transcript of the record of the said District Court in the above-entitled matter as agreed on by the parties.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, this 18th day of February in the year of our Lord one thousand nine hundred and nineteen and of the Independence of the said United States the one hundred and forty-third.

[Seal District Court of the United States, Southern District of N. Y.]

ALEX. GILCHRIST, JR., *Clerk.*

Endorsed on cover: File No. 26,960. S. New York D. C. U. S. Term No. 874. Edward A. Rumely, appellant, vs. Thomas D. McCarthy, United States Marshal for the Southern District of New York, and Samuel M. Hitchcock, United States Commissioner for the Southern District of New York. Filed February 21st, 1919. File No. 26,960.



In the Supreme Court of the United States.

OCTOBER TERM, 1918.

EDWARD A. RUMELY, APPELLANT,
v.
THOMAS D. MCCARTHY, UNITED STATES Marshal in and for the Southern District of New York, and Samuel M. Hitchcock, United States Commissioner for the Southern District of New York, appellees.

No. 874.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

MOTION ON BEHALF OF APPELLEES TO ADVANCE.

Comes now the Solicitor General on behalf of the appellees, and respectfully moves the advancement of the above-entitled cause for hearing during the present term.

The case is an appeal from an order of the District Court of the United States for the Southern District of New York discharging a writ of habeas corpus brought for the purpose of preventing the removal of the petitioner to the District of Columbia to answer an indictment for violations of the Trading-with-the-Enemy Act, for which removal a warrant had been directed to issue by the New York court.

109400—19

Other indictments are pending against the appellant in the Southern District of New York for similar offenses. The judge of the District Court has consented to such removal, notwithstanding the pendency of such indictments, and has ordered the issuance of a warrant of removal.

Depositions in Europe are to be taken by the appellant, which are deferred because of the pendency of this appeal. The trial of the case will, therefore, suffer great delay unless this appeal is disposed of speedily.

Notice of this motion has been served upon opposing counsel.

ALEX. C. KING,
Solicitor General.

MARCH, 1919.

WASHINGTON : GOVERNMENT PRINTING OFFICE : 1919

-3-

Office Supreme Court, U. S.
FILED
APR 12 1919
JAMES D. MAHER,
CLERK.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1918

No. 874

EDWARD A. RUMELY, *Appellant ~~Appellee~~*,

vs.

THOMAS D. McCARTHY, United States Marshal for the Southern District of New York, and SAMUEL M. HITCHCOCK, United States Commissioner for the Southern District of New York, Appellees.

Appeal from the District Court of the United States for the Southern District of New York.

BRIEF AND ARGUMENT FOR THE APPELLANT

STEPHEN C. BALDWIN,
FREDERICK J. POWELL,
JOHN M. LOWRIE,
Of Counsel.

B. H. Tyrrel, Printer, 206-8 Fulton Street, New York.

INDEX

	PAGE
INTRODUCTION:	1
The Prior Proceedings in New York Against the Appellant, Based on the Same Transaction	2
The Position of the Appellant	7
The Specific Points Relied Upon by the Appellant on this Appeal	11
Errors Relied Upon	12
Relevant Provisions of the Trading with the enemy Act	14
ARGUMENT	16
POINT 1: The District Court erred in refusing to consider the appellant's plea that there was no probable cause to believe that he had been guilty of the offense charged in the Washington indictment, because he could not be compelled to make a report to the Alien Property Custodian of the facts alleged in the Washington indictment as that would compel him in a criminal case to be a witness against himself; and that plea should have been sustained	16
(1) The Appellant's Plea as to Self-Incrimination was Valid	17
(A) The Provisions of the Act	17

PAGE

(B) By uncontroverted evidence it clearly appeared that the appellant "traded" for the benefit of, and with, the S. S. McClure Newspaper Corporation..... 18

(C) By uncontroverted evidence it clearly appeared that, on the assumption that the appellant held the stock of the McClure Corporation on behalf of the Imperial German Government, the above "trading" by the appellant for that corporation was for the benefit of that government 23

(D) By uncontroverted evidence, therefore, it clearly appeared (under the assumption in question) that the appellant was guilty of the offense of trading with the enemy under Section 3 of the Act. 25

(E) The rendition of the report, the failure to file which is the basis of the Washington indictment, would therefore tend to disclose that the appellant was guilty of a crime under the Trading with the enemy Act 25

(F) Under the Fifth Amendment the appellant could not be compelled to make that disclosure..... 28

(G) There was hence no probable cause to believe that the appellant had been guilty of the offense alleged in the Washington indictment 32

PAGE

(2) The District Court Erred in Refusing to Consider the Appellant's Plea as to Self-Incrimination..... 32
(A) The appellant does not attack the general constitutionality of Section 7 (a) of the Act..... 33
(B) The appellant is within the rule in the Henry case..... 35

POINT II: The District Court erred in holding that there was probable cause to believe that the appellant had committed within the District of Columbia (and only there) the offense charged by the Washington indictment..... 38
(A) The appellant was not personally present in the District of Columbia at the time of the alleged offense.. 38
(B) The appellant was under no duty to make the report in question in the District of Columbia (and only there), and the situs of the alleged omission to perform such duty was therefore not within that district.. 39

POINT III: The District Court erred in refusing to hold that the removal of the appellant to the District of Columbia would involve an invasion of his constitutional right to a speedy trial on the New York indictments..... 46
(A) The unreasonable delay in the trial of the New York indictments caused by these removal proceedings.. 46
(B) This point is properly raised in these *habeas corpus* proceedings..... 49

PAGE

POINT IV: Before granting its consent to the removal of the appellant from the Southern District of New York, the District Court should have required the Government to state its reasons for demanding such removal and should have given the appellant an opportunity to reply thereto..... 50

(A) The consent of the District Court to the removal was necessary..... 50

(B) How the consent of the District Court was obtained..... 53

(C) This question is not academic.... 56

CONCLUSION: The order of the District Court should be reversed and the appellant discharged from custody..... 57

CASES CITED

PAGE

Beavers *v.* Haubert, 198 U. S. 77..47, 51, 52, 53
Burr's Trial 1, page 244..... 28

Counselman *v.* Hitchcock, 142 U. S. 547.. 28, 29
City of St. Louis *v.* Williams, 235 Mo. 503. 30

Ex Parte Kneedler, 243 Mo. 632..... 30, 31

Green *v.* Henkel, 183 U. S. 249..... 38

Haas *v.* Henkel, 216 U. S. 462.48, 49, 51, 52, 53, 54
Henry *v.* Henkel, 235 U. S. 219..... 32, 51
Hyde *v.* Shine, 199 U. S. 62..... 9, 57

In re Johnson, 167 U. S. 125..... 51
In re Podolin, 205 Fed. 563, 210 Fed. 97... 33, 34
In re Tillinghast, 233 Fed. 712..... 48

New York Central & H. R. R. Co. *v.* United States, 166 Fed. 267.....40, 43, 44

People *v.* Henwood, 123 Mich. 317..... 30
Peckham *v.* Henkel, 216 U. S. 483..... 52, 56
People *v.* Rosenheimer, 209 N. Y. 115; 146 App. Div. 875..... 30, 31
People *v.* Schneider, 139 Mich. 673..... 30
Price *v.* Henkel, 216 U. S. 488..... 38, 51

State *v.* Hanson, 16 No. Dak. 347..... 30, 57

Tinsley *v.* Treat, 205 U. S. 20..... 38

United States *v.* Lombardo, 241 U. S. 73.40, 43, 44

Wilson *v.* United States, 211 U. S. 361.... 29, 31

IN THE

Supreme Court of the United States,

OCTOBER TERM, 1918,

No. 874.

EDWARD A. RUMELY, Appellant,

against

THOMAS D. MCCARTHY, United States Marshal in and for the Southern District of New York, and Samuel M. Hitchcock, United States Commissioner for the Southern District of New York.

Brief for the Appellant.

INTRODUCTION.

This is an appeal from an order of the District Court for the Southern District of New York entered on February 5, 1919, dismissing writs of *habeas corpus* and *certiorari* which were sued out by the appellant to determine the legality of his detention under a commitment issued by the ap-

pellee, Samuel M. Hitchcock, Esquire, United States Commissioner, whereby the appellant was committed to the custody of the appellee, Thomas D. McCarthy, United States Marshal for the Southern District of New York, pending the issuance by a District Judge of a warrant for the appellant's removal to the District of Columbia for trial on an indictment which had been returned against him by the Grand Jury of that District on December 2, 1918. (R., p. 206). This indictment will be referred to as the "Washington indictment". The offense charged was a violation of Sections 7 and 16 of the Act of Congress approved October 6, 1917, known as the "Trading with the enemy Act", it being alleged that the appellant had failed to report to the Alien Property Custodian, as required by the Act, the alleged fact (first count) that he held certain shares of capital stock of the S. S. McClure Newspaper Corporation on behalf of the Imperial German Government and the alleged fact (second count) that he was indebted to the Imperial German Government to the extent of over a million dollars. (Government's Exhibit 1, R., pp. 8, 199).

The Prior Proceedings in New York Against the Appellant, Based on the Same Transaction.

On July 8, 1918, the appellant was arrested in New York City on a warrant charging him with perjury in making a false report to the Alien Property Custodian. (R., p. 33.) This was followed on August 2, 1918, by two indictments returned by the Grand Jury for the Southern District of New York, upon which the appellant was arraigned on that day, pleaded not guilty and was released on

$35,000 bail. (R., p. 33.) The appellant is now awaiting trial on these indictments. The first of these indictments (which is against the appellant alone for perjury and which we shall refer to as the "New York indictment") charges that the appellant's report of December 4, 1917, to the Alien Property Custodian was false in that in response to the requirements of the report that he state property held by him for "alien enemies" and indebtedness owed by him to "alien enemies", he swore that the only item in this category was a $100,000 note executed by him and payable to one Herman Sielcken, whereas, it is charged, he was not indebted to Sielcken at all, but was indebted to the Imperial German Government to the extent of over a million dollars and held certain shares of the capital stock of the S. S. McClure Newspaper Corporation for the Imperial German Government. (Appellant's Exhibit B; R., p. 174.)

The Government has admitted that the alleged indebtedness to the Imperial German Government referred to in the New York indictment is the same as the alleged indebtedness referred to in the Washington indictment and that the S. S. McClure Newspaper Corporation referred to in each indictment is the same corporation. (R., pp. 40-42).*

Indeed, the Government does not dispute that both indictments relate to the same transaction and involve substantially the same issues of fact, namely, whether the appellant was indebted to Herman Sielcken to the extent of $100,000 or to the Imperial German Government to the extent of over a million dollars and whether he did or did not hold shares of the capital

* For further proof as to the identity of the alleged indebtedness and shares of stock of this corporation referred to in these indictments see Record, pp. 43, 48, 49.

stock of the S. S. McClure Newspaper Corporation for the Imperial German Government. On the contrary, the Government has, as we shall show below, relied upon the fact that the issues are substantially the same and, in respect of any effect to be given in these proceedings to the New York indictment, the Government relies solely upon the fact that the technical crime charged in the Washington indictment (*i. e.*, failure to report under the Trading with the enemy Act) is different from the technical crime charged in the New York indictment (*i. e.*, perjury for making a false report under that Act). Undoubtedly the two offenses—although involving the same transaction and substantially the same major issues—are technically different, but the difference is effected simply by an adroit method of pleading. In New York the Government charges that the defendant made a false report; in Washington it charges in effect that he made no report at all.*

On the ground that the two indictments technically charge different offenses, the Commissioner excluded them from evidence, as well as other proof relating to the proceedings under them (R., pp. 31, 39-40, 151-152). The District Court held that the exclusion of the indictments was error but that they were not material** (R., pp. 202-203).

---

* In this connection it is instructive to note that in the second of the New York indictments (which also involves the same transaction) and is against the appellant and one S. Walter Kaufmann for a conspiracy to fail to report the same alleged enemy owned indebtedness and stock, the making of this report of December 4, 1917, stating the $100,000 indebtedness to Herman Sielcken, is alleged as one of the overt acts evidencing the conspicary to fail to report the indebtedness of over a million dollars to the Imperial German Government. (Appellant's Ex. A.; R., p. 169).

** We assume that this ruling of Judge Mayer applies also to the other evidence relating to the proceedings under the New York indictments and accordingly we have referred to this evidence in the present brief.

On November 22, 1918, the appellant made a motion before the District Court in the proceedings under the New York indictment for a commission to examine certain witnesses in Switzerland. The argument on this motion was postponed until November 29, 1918, at the Government's request, and on that day the Government asked the District Court to postpone the hearing of the motion on the ground that the Grand Jury for the District of Columbia had just voted an indictment against this appellant; that such indictment involved the same transaction and substantially the same issues as the New York indictment; that the appellant would undoubtedly, therefore, move under the Washington indictment for a commission similar to that moved for under the New York indictment; that the Government proposed to try the Washington indictment before the New York indictment; that the District Court for the District of Columbia would thus be "the court of primary jurisdiction" and the District Court for the Southern District of New York, the "court of secondary jurisdiction" and that, therefore, the latter court should postpone the hearing on the motion until the appellant had been arraigned in the District of Columbia and had made his motion before that Court for a commission to examine witnesses abroad, and that then the New York court could be guided by the decision of the court in Washington on that motion. The appellant's counsel naturally protested against this suggestion, pointed out that the appellant from July 8, or for a period of over four months since his arrest in New York, had been preparing his defense to the charges in New York; that the New York indictments still stood and that there was no intimation by the Government that they would ultimately be quashed; that, therefore, the appellant

had a right to proceed to complete his defense to the New York indictments by the examination of witnesses abroad and that the suggestion that the District Court for the Southern District of New York should defer to the action of the Supreme Court of the District of Columbia was manifestly improper. Judge Augustus Hand agreed with the appellant's counsel and directed that the argument on the merits of the motion proceed. The Government having admitted that the testimony abroad desired by the appellant was material and necessary to his defense, there was little to be said in opposition to the motion on the merits and Judge Hand rendered his decision from the bench granting the motion. A few days later, on December 10, 1918, the appellant was arraigned before Commissioner Hitchcock in the present proceedings to remove him to the District of Columbia. Several hearings were held before the Commissioner at which both the Government and the appellant introduced evidence, and on January 18, 1919, the Commissioner overruled all the contentions in opposition to the appellant's removal and committed the defendant to the custody of the Marshal (R., pp. 169, 7). The appellant thereupon sued out the writs of *habeas corpus* and *certiorari* (R., pp. 14, 18). The hearing on these writs was held on January 25, 1919, and on February 5, 1919, the District Court entered the orders dismissing the writs and allowing this appeal (R., pp. 206-207, 209).

On February 15, 1919 (the intervening time of counsel having been taken up by the conduct of the removal proceedings) the appellant's counsel wrote the Assistant United States Attorney at New York stating that they were ready to have the commission issued in the New York proceedings and inquiring whether the Government was

ready to arrange for its representatives and those of the appellant to go abroad for the execution of the commission. On February 18, 1919, the United States Attorney replied that the representative of the Government could not take the trip before the first of May because of other engagements and further indicated that the commission should not issue until the removal proceedings and "all the preliminary proceedings had been cleared away".*

The Position of the Appellant.

In the hearings before the Commissioner the appellant proved that immediately after the proceedings were instituted in New York he engaged counsel to prepare his defense, that they had ever since been continuously employed in this work, and that the enormous mass of books and papers that were involved in the case, almost enough to fill a room, had been collected in New York. It was also shown that his defense would require the production of bank records, files of the *Evening Mail* and other documents forming part of working organizations in New York which it would be difficult to move. He also showed that many of his witnesses resided in New York and he offered to prove (the offer being excluded by the Commissioner) that many of his witnesses would be members of the *Evening Mail* organization in New York, whom it would be impracticable to summon to other jurisdictions *en masse.* (R., pp. 35-36, 85-91.)

* While these communications are not in the transcript of record before this Court, we have taken the liberty of referring to them in view of the statement of the Solicitor General contained in his motion papers to advance the case on the calendar of this Court, to the effect that "depositions in Europe are to be taken by the appellant, which are deferred because of the pendency of this appeal."

The situation in which the appellant thus finds himself is this: After a period of over six months in which he has been preparing to meet the charges against him in New York—his home community and the place where most of his witnesses reside and where most of the documentary evidence is located—and after the Court there has granted him permission to secure abroad testimony material and necessary to his defense, the Government suddenly attempts to transfer the situs of the case to the District of Columbia, with the tremendous hardship and expense on the defendant which this entails, and then employs this attempt as an excuse for delaying the issuance of the commission abroad and the trial of the case in New York. No claim is made by the Government that this belated attempt to remove the appellant to Washington was due to any recent discovery of fact or recent decisions of law. On the contrary, the indictment in Washington is based on the same transaction and the same major issues that form the subject of the New York indictment handed down months before. *And the most remarkable aspect of this whole extraordinary proceeding is that the Government, in response to the appellant's insistence that he be informed of its reasons for this sudden shift so that he might address the District Court on the question of whether those reasons should prevail, not only refused to do so, but on the contrary most earnestly requested the District Court not to compel it to disclose those reasons!*

We do not deem it meet before this Court to designate the tactics thus employed and we readily admit that an accused is not entitled to be ad-

vised of all the motives or policies underlying the conduct of criminal proceedings against him. The appellant asserts no such right but does believe, that under the circumstances here presented, it is incumbent upon the Government to present its reasons why the jurisdiction of the District Court for the Southern District of New York should be ousted, so that the appellant may have a proper opportunity to present his case on that question. We most urgently press upon this Court the appellant's plea that the exercise by the Government of its alleged right under the Revised Statutes to remove him from the jurisdiction it first selected, to another jurisdiction which it selected months later, will result in a severe and demonstrable hardship vitally prejudicial to his right adequately to meet the charges against him, and, as we shall argue in this brief, violative of his constitutional rights as an American citizen. We respectively submit that the present case, beyond any that have been presented to this Court, calls forth the thought reflected in the following quotation from the opinion in *Hyde* v. *Shine* (1904), 199 U. S. 62, at page 78:

> "But we do not wish to be understood as approving the practice of indicting citizens of distant States in the courts of this District, where an indictment will lie in the State of the domicil of such person, unless in exceptional cases where the circumstances seem to demand that this course shall be taken. To require a citizen to undertake a long journey across the continent to face his accusers, and to incur the expense of taking his witnesses, and of employing counsel in a distant city, involves a serious hardship to which he ought not to be subjected, if the case can be tried in a court of his own jurisdiction."

The Commissioner expressly stated that he would not hold the appellant for removal if the Washington indictment had charged the identical crime that was charged in the New York indictment (R., p. 33) and the opinion of the District Court indicates that it probably concurred in this idea. We believe that the technical variation in the two indictments is not controlling.

We recognize the rule repeatedly laid down by this Court that a writ of *habeas corpus* is not equivalent to and cannot be used as a writ of error and that, therefore, the questions open on an appeal of this nature are limited. We submit, however, that even within these limitations the appellant is entitled to a favorable decision. We may here add that at the hearing before the Commissioner, the appellant did not attempt to introduce any evidence whatsoever on the ultimate issues of the case, that is as to whether he did or did not hold shares of stock of the S. S. McClure Newspaper Corporation on behalf of the Imperial German Government or did owe $100,000 to Herman Sielcken or over a million dollars to the Imperial German Government. The appellant's counsel recognized that the proper tribunal for a determination of these questions was the trial court either in New York or Washington and, therefore, the evidence before the Commissioner was confined solely to issues as to the locus of the alleged crime and other questions bearing upon the propriety of the attempted removal. As to the merits of the ultimate issues in the case the appellant can conserve his rights by a writ of error, if required, from the decision of the trial court, but for the protection of his right to a prompt trial of his

case in New York and his right not to be removed to the District of Columbia while he is endeavoring to meet the charges in New York, it is apparent that the writs of *habeas corpus* and *certiorari* are his only remedies. If he is compelled to submit to trial in the District of Columbia the injury to his case by reason of such removal will have been irrevocably suffered when the trial is had and to repair that injury a writ of error from the decision of the trial court will avail him nothing.

The Specific Points Relied Upon By the Appellant On This Appeal.

The principal points relied upon by the appellant before this Court are as follows:

1. That the District Court erred in refusing to pass upon the appellant's plea of his constitutional privilege against self incrimination. (Point I, infra, p. 16.)

2. That the District Court erred in finding reasonable cause to believe that the offense charged by the Washington indictment was cognizable by (and only by) the Supreme Court for the District of Columbia. (Point II, infra, p. 38.)

3. That the District Court erred in not holding that the removal of the appellant would violate his constitutional right to a speedy trial of the New York indictment. (Point III, infra, p. 46.)

4. That the District Court should have required the Government to state the reasons for the attempted removal and to have given the appellant an opportunity to reply thereto. (Point IV, infra, p. 50.)

Errors Relied Upon.

The errors in which we conceive the learned Judge below to have fallen are as follows:

In discharging the writ of *habeas corpus* and *certiorari* and remanding the petitioner to custody; in holding that the petitioner's restraint and detention were without authority of law and that the petitioner was not deprived of his liberty in violation of his rights, privileges and immunities under the Constitution and laws of the United States, (1st, 2nd and 3rd Assignments, R. p. 210); in holding that the Commissioner was not without authority, power or jurisdiction to entertain any charges against the petitioner or to act or to proceed in the premises (4th Assignment, R. p. 210); in declining to hold that the Commissioner was without jurisdiction to commit the petitioner for the reason that the petitioner was under indictment in the Southern District of New York and had been arraigned and admitted to bail under such indictment and that the consent of the District Court for the Southern District of New York had not been obtained (5th assignment, R., p. 211); in holding that the indictment charged a crime or offense against the laws of the United States and that the evidence given before the Commissioner showed probable cause to believe that the petitioner had been guilty of any such crime or offense (8th and 9th Assignments, R. p. 211); in failing to hold and decide that the restraint of the petitioner was in violation of the provisions of Article Sixth of the Amendments to the Constitution of the United States for the reason that upon the proof before the Commissioner and before the said Court it was shown that the offense charged in

the indictment was not committed in the District of Columbia (15th Assignment, R. p. 211); in holding that the Trading with the enemy Act required reports under Section 7 (a) of said Act to be made in the District of Columbia and in holding that the said Trading with the enemy Act required reports under said Section to be made at the office of the Alien Property Custodian (16th and 17th Assignments, R. p. 212); in holding that Section 7 (a) of the Trading with the enemy Act required any report to be made by the petitioner with respect to the facts specified in the indictment (18th Assignment, R. p. 212); in failing to hold and decide that the enforcement of the said Act as so construed would be in violation of the rights granted the petitioner under the Fifth Amendment to the Constitution of the United States (19th Assignment, R. p. 212); in holding that the questions as to the infringement of the constitutional rights of the petitioner by the enforcement of said Act as so construed should not be determined in the *habeas corpus* proceedings (20th Assignment, R. p. 212); in holding that the Supreme Court for the District of Columbia had exclusive jurisdiction of the alleged offenses charged in the indictment (21st Assignment, R. p. 212); in not holding and deciding that the petitioner was deprived of his liberty without due process of the law within the provision of the Fifth Amendment to the Constitution of the United States (22nd Assignment, R. p. 212); and in citing Section 1014 of the Revised Statutes as authority for the petitioner's removal to the District of Columbia upon the facts disclosed in said petition and on the evidence before said Commissioner and before the District Court for the Southern District of New York.

Relevant Provisions of the Trading with the enemy Act.

For the convenience of the Court we print here certain important provisions of the Trading with the enemy Act referred to in the following pages:

Section 7 (*a*) provides in part as follows:

> "Any person in the United States who holds or has or shall hold or have custody or control of any property beneficial or otherwise, alone or jointly with others, of, for, or on behalf of an enemy or ally of enemy, or of any person whom he may have reasonable cause to believe to be an enemy or ally of enemy and any person in the United States who is or shall be indebted in any way to an enemy or ally of enemy, or to any person whom he may have reasonable cause to believe to be an enemy or ally of enemy, shall, with such exceptions and under such rules and regulations as the President shall prescribe, and within thirty days after the passage of this Act, or within thirty days after such property shall come within his custody or control, or after such debt shall become due, report the fact to the Alien Property Custodian by written statement under oath, containing such particulars as said custodian shall require. The President may also require a similar report of all property so held, of, for or on behalf of, and of all debts so owed to, any person now defined as an enemy or ally of enemy, on February third, nineteen hundred and seventeen: Provided, That the name of any person shall be stricken from the said report by the Alien Property Custodian either temporarily or permanently, when he shall be satisfied that such person is not an enemy or ally of enemy.
>
> The President may extend the time for fil-

ing the lists or reports required by this section for an additional period not exceeding ninety days."

There is no specific penalty provided in the Act for the failure to make the reports referred to in Section 7 (a), but Section 16 provides a general penalty for violation of the Act as follows:

"SEC. 16. That whoever shall wilfully violate any of the provisions of this Act or of any license, rule or regulation issued thereunder, and whoever shall wilfully violate, neglect, or refuse to comply with any order of the President issued in compliance with the provisions of this Act, shall, upon conviction, be fined not more than $10,000, or, if a naturalized person, imprisoned for not more than ten years, or both; and the officer, director, or agent of any corporation who knowingly participates in such violation shall be punished by a like fine, imprisonment, or both, and any property, funds, securities, papers, or other articles or documents, or any vessel, together with her tackle, apparel, furniture, and equipment, concerned in such violation shall be forfeited to the United States."

ARGUMENT.

POINT I.

The District Court erred in refusing to consider the appellant's plea that there was no probable cause to believe that he had been guilty of the offense charged in the Washington indictment, because he could not be compelled to make a report to the Alien Property Custodian of the facts alleged in the Washington indictment as that would compel him in a criminal case to be a witness against himself; and that plea should have been sustained.

Prima facie evidence of the two basic facts of enemy-owned stock and indebtedness alleged in the Washington indictment, was produced by the Government through the introduction at the hearing before the Commissioner of a certified copy of that indictment. As stated by the learned District Judge, these allegations were not controverted by the appellant and it must, therefore, *for the purposes of this proceeding*, be taken as true that

> "(1) On October 6, 1917, Rumely had stock of the S. S. McClure Newspaper Corporation that he held for and on behalf of the German Government, and that during the period from October 6, 1917, to December 20, 1917, the day to which the President extended the time for making reports, Rumely did not report the fact to the Alien Property Custodian, and that
>
> (2) On October 6, 1917, Rumely was indebted to the German Government in the sum

of $1,451,700.00, and that during the period aforesaid he did not report that fact to the Alien Property Custodian" (R. p. 202).

(1) The Appellant's Plea as to Self-Incrimination was Valid.

(A) The Provisions of the Act.

Section 3 of the Trading with the enemy Act provides:

> (a) "It shall be unlawful for any person in the United States, except with the license of the President, granted to such person, or to the enemy, as provided in this Act, to trade, or attempt to trade, either directly or indirectly, with, to, or from, or for, or on account of, or on behalf of, or for the benefit of, any other person, with knowledge or reasonable cause to believe that such other person is an enemy or ally of enemy, or is conducting or taking part in such trade, directly or indirectly, for, or on account of, or on behalf of, or for the benefit of, an enemy or ally of enemy."

The Act further provides that such license must be applied for within thirty days after the passage of the Act. The Act went into effect October 6, 1917, and the period within which the license must have been obtained, therefore, expired on November 5, 1917. The undisputed evidence showed that no such license had ever been obtained (R., pp. 48, 82, 83), and if, therefore, after November 5, 1917, the appellant "traded" or attempted to "trade directly or indirectly, with, to, or from, or for, or on account of, or on behalf of, or for the benefit of," the Imperial German Government, he was guilty of an offense

against the United States and was subject to the penalty imposed by Section 16 of the Act.

The words "to trade" are defined in Section 2 of the Act as follows:

> "The words 'to trade' as used herein shall be deemed to mean:
>
> (a) Pay, satisfy, compromise, or give security for the payment or satisfaction of any debt or obligation.
>
> (b) Draw, accept, pay, present for acceptance or payment, or indorse any negotiable instrument or chose in action.
>
> (c) Enter into, carry on, complete, or perform any contract, agreement or obligation.
>
> (d) Buy or sell, loan or extend credit, trade in, deal with, exchange, transmit, transfer, assign or otherwise dispose of, or receive any form of property.
>
> (e) To have any form of business or commercial communication or intercourse with."

(B) By Uncontroverted Evidence it Clearly Appeared that the Appellant "Traded" for the Benefit of, and with, the S. S. McClure Newspaper Corporation.

The following facts were established by the appellant before the Commissioner by evidence which was not controverted by the Government:

The appellant organized the S. S. McClure Newspaper Corporation under the laws of New York in May, 1915, and has been connected with this corporation since that time as stockholder, officer and director. (R. p. 37). He occupied the offices of director and member of the Finance Committee since June 9, 1915, and was managing Vice-President from that date until his election as President in April, 1918 (R. 37-38). The By-Laws

of the corporation (Appellant's Exhibit G, R., p. 193), provide (Article IV, Section 8), that

> "The Vice-President shall be the executive head of the corporation, control the general and editorial policy of the corporation, and have general supervision over the business and over the several officers of the Corporation, subject, however, to the control of the Board of Directors, and in financial matters of which the Finance Committee has control, he shall also be subject to the control of the Finance Committee."

He also held the position of Secretary for a time (R., p. 38). The principal business of the S. S. McClure Newspaper Corporation was the holding of stock of the Mail and Express Company, the owner and publisher of the New York newspaper known as the Evening Mail, and the financing of the operations of that Company (R., pp. 43, 80-81). In May, 1915, the McClure Corporation acquired 3,800 shares out of a total issue of 4,000 shares of the Mail and Express Company stock (R. p. 43). The financing of the Mail and Express Company was carried on by the McClure Newspaper Corporation through the loan of moneys advanced from time to time against the notes of the Mail and Express Company or through the endorsement of the notes of the latter Company by the McClure Corporation and their discount at banks (R. pp. 43-45, 76-80). Within the period from November 7, 1917, to December 20, 1917, notes of the Mail and Express Company aggregating more than $50,000 were endorsed by the Newspaper Corporation and their discount secured at the National Park Bank (R., p. 45; Appellant's Exhibit O, R., p. 198). With respect to the ap-

pellant's participation in these transactions, he testified:

> "A. I went to the National Park Bank, to the officers who were known to me, and arranged for an increase in the line of credit, and agreed to pledge, to give my personal endorsement to the notes, and did so do, but I cannot state the exact date on which I began endorsing the notes, but some time within this period (*i. e.* between November 7th, 1917, and December 30, 1917).
>
> Q. Did you personally endorse some of these notes to which we have been referring?
>
> A. I agreed to do so, and I did.
>
> Q. You did actually personally endorse them?
>
> A. Yes, sir.
>
> Q. For the benefit of——
>
> A. The S. S. McClure Newspaper Corporation.
>
> Q. And in order to secure the discount of the notes——
>
> A. And in order to make the notes acceptable for discount at the National Park Bank." (R. p. 76).

He further testified that he pledged bonds belonging to him personally as security for the notes discounted (R., p. 77).

Appellant's Exhibit O (R., p. 198) was a schedule of the receipts and disbursements of the S. S. McClure Newspaper Corporation during the month of December, 1917, and reference was made to various transactions between the two companies, including certain transactions relating to Liberty Bonds. In response to an inquiry as to the appellant's participation in this series of transactions he stated:

> "A. I directed that the discount should be made by the S. S. McClure Newspaper Cor-

poration, to purchase the Liberty Loan, and directed that the S. S. McClure Newspaper Corporation should accept from the Mail and Express Company, a payment on those bonds in installments as the moneys were collected from the employees and officers of the company, and I arranged for the credit.

Q. Credit where?

A. I think it was at the Atlantic National Bank." (R., p. 80.)

In addition to describing various other transactions in respect to the McClure Corporation, the appellant testified as follows:

"Q. In addition to the various transactions to which you have testified, did you have any further personal transaction or transactions with the S. S. McClure Newspaper Corporation in November, 1917?

A. I purchased from the S. S. McClure Newspaper Corporation $200,000 of the notes that it held against the Mail and Express Company for $100,000 which I paid by the issuance of my personal note for $100,000, with four per cent. interest.

Q. Payable to whom?

A. Payable to the S. S. McClure Newspaper Corporation.

Q. When was that done?

A. It was between November 10th and 12th.

Q. 1917?

A. 1917." (R., p. 82.)

Between November 10 and 12, 1917, the McClure Corporation distributed its assets except the note of the appellant of $100,000 and on distribution these assets were received by the appellant who was thereafter the sole stockholder of the corporation except with respect to one or two shares (R., pp. 103-104).

From this uncontroverted evidence it appears:

First: That in the period between November 7 and December 20, 1917, the appellant, for the purpose of placing the McClure Corporation in funds, personally endorsed notes of the Mail and Express Company which had been endorsed by the McClure Corporation, aggregating over $50,000 in amount, arranged for the discount of these notes at the National Park Bank and also pledged bonds personally held by him as security for these notes.

It is clear that these activities constituted a trading within the meaning of the Act for they come squarely within subdivision (a) of section 2 (*supra,* p. 18)—"*give security for the payment or satisfaction of any debt or obligation,*" and within subdivision (b) of the same section—"*indorse any negotiable instrument or chose in action,*" and within subdivision (c) of the same section—"*loan or extend credit.*"

It is equally clear that this constituted a *trading,* "for, or on account of, or in behalf of, or for the benefit of" the McClure Corporation, within the meaning of section 3 (*supra,* p. 17).

Second: That, within the same period, the appellant purchased from the McClure Corporation $200,000 face amount of notes of the Mail and Express Company for $100,000 which the appellant paid for by the delivery to the McClure Corporation of his personal note for $100,000 and that he received certain assets thereof on the reduction of the capital stock of that Corporation (*supra,* p. 21).

This also clearly constituted "trading" within the meaning of the Act for it squarely falls within subdivision (c) of section 2—"*enter into, carry on, complete or perform, any contract, agreement or obligation*"; and subdivision (d)—"*buy or sell * * * trade in, deal with, exchange, transmit, transfer, assign or otherwise dispose of, or receive any form of property.*" It is equally clear that this constituted *trading* "with, to or from" the McClure Corporation within the meaning of section 3.

Third: The uncontroverted evidence shows various other transactions, within the same period, involving the appellant and the McClure Corporation (particularly the Liberty Loan bond purchases, the appellant's services rendered to the Corporation and its payment therefor), which constituted "trading" with or for the benefit of the McClure Corporation within the meaning of one or more of the subdivisions of section 2, which is very comprehensive, subdivision (e) covering "any form of business or commercial communication or intercourse with" (R., pp. 44-46, 149-151).

(C) By Uncontroverted Evidence It Clearly Appeared That, On the Assumption That the Appellant Held the Stock of the McClure Corporation On Behalf of the Imperial German Government, the Above "Trading" By the Appellant For That Corporation Was For the Benefit of That Government.

The appellant organized the McClure Corporation about May, 1915. Approximately seventy-five to ninety per cent. of its outstanding stock was

pledged by the appellant with one Walter Lyon to secure four promissory notes executed by the appellant to Lyon on June 1, 1915, January 4, 1917, February 20, 1917 and April 19, 1917, respectively, aggregating $1,451,700 (R., p. 60, Appellant's Exhibits H, I, J, K, and the duplicate originals Government's Exhibits 4, 5, 6 and 7, R., pp. 193-197-199).

In September, 1917, the certificates for this stock were returned to the appellant, and after October 1, 1917, stood in the appellant's name (R., p. 84). After November 6th of that year all of the stock of the company stood in his name, with the possible exception of a share or two (R., *id.*).

It is clear that if, as the Government alleges and as must be deemed true in these proceedings, the Imperial German Government owned this stock and the appellant held it on behalf of that government, the indorsing of the notes of the McClure Corporation for discount at the National Park Bank, the pledging of his own bonds therefor by the appellant and the various other transactions by the appellant between November 7, 1917, and December 20, 1917, which constituted "trading" with or for the McClure Corporation as above shown, constituted "trading" with or for the benefit of the Imperial German Government. It cannot be seriously contended that, within the meaning of the Trading with the enemy Act, these transactions were not for the benefit of that government merely because it owned the stock and operated through the medium of a New York corporation. Such a contention of course would largely defeat the purposes of the Act by permitting alien enemies to secure immunity through the medium of the corporate entity.

(D.) By Uncontroverted Evidence, Therefore, it Clearly Appeared (Under the Assumption in Question) that the Appellant was Guilty of the Offense of Trading with the Enemy Under Section 3 of the Act.

This inevitably follows from the preceding discussion.

(E.) The Rendition of the Report, the Failure to File Which is the Basis of the Washington Indictment, Would Therefore Tend to Disclose that the Appellant was Guilty of a Crime Under the Trading with the Enemy Act.

If the appellant had, pursuant to the provisions of Section 7 (a) of the Act, reported to the Alien Property Custodian that he held the McClure Corporation stock for the Imperial German Government, as the first count of the Washington indictment alleges he was obliged to do, this disclosure would have tended to show that he was guilty under the Act of the offense of trading without a license. It is true that the disclosure of this alleged fact alone would not have shown the commission of a crime but it would have *tended* in that direction by furnishing means through which its commission could be ascertained. And this is sufficient in order to invoke the constitutional privilege against self-incrimination [Cases infra]. In the present case the tendency to disclose the crime would not have been remote but would almost inevitably have lead to such a disclosure, for if it had been reported that the Imperial German

Government owned a controlling interest in the McClure Newspaper Corporation, an investigation would immediately have been instituted by the Alien Property Custodian and a very brief and simple examination would have at once disclosed the transactions above mentioned.

With respect to the second count of the Washington indictment, the situation is similar. In its briefs below, the Government endeavored to draw a distinction between the two counts in respect of the point under discussion and argued that since the second count of the Washington indictment merely alleged that the appellant was indebted to the Imperial German Government and did not allege that he held the McClure Corporation stock on behalf of that government, a disclosure of such indebtedness would not have tended to disclose that his transactions for that corporation and, therefore, for the benefit of its stockholders, were for the benefit of the Imperial German Government. It was therefore contended that, as respects the Government's right of removal on the second count of the Washington indictment, the appellant's point was not well taken.

The first answer to this contention of the Government is that so far as these proceedings are concerned, both counts of the Washington indictment are in evidence for all purposes of the proceeding and since no evidence was submitted in rebuttal of the allegation contained in the first count as to the ownership by the Imperial German Government of the stock, that allegation must be taken as true with respect to a removal under either count.

The second answer is that the result is the same even if the first count be disregarded. The identity of the alleged indebtedness of the appellant to the Imperial German Govern-

ment referred to in that count and the indebtedness evidenced or purported to be evidenced by the above four notes of the appellant to Walter Lyon for that amount was established by the appellant's testimony (R., p. 49) and, as already stated, from seventy-five to ninety per cent. of the outstanding stock of the McClure Corporation was pledged to secure these notes (R., pp. 83-84). It follows that any disclosure of this indebtedness to the Imperial German Government would likewise have carried with it, or have tended so to do, a disclosure of the interest of that Government in this stock. In this connection, it may be noted that the blank forms provided for the report to the Alien Property Custodian (see Appellant's Exhibit D, R., pp. 187-188) require in Schedule 8, that in making a return as to a debt owed to an enemy, if the indebtedness is secured in any way, the security must be described and its estimated value stated, so that a report of the alleged indebtedness here would of necessity have disclosed its relation to the pledged stock, and would have tended to show the commission by the appellant of the offense outlined above. It should also be observed that by the terms of the notes, they were payable at the option of the appellant in stock of the McClure Corporation pledged thereunder (Appellant's Exhibits H, I, J and K, Government's Exhibits 4, 5, 6 and 7, R., pp. 193-197, 199), so that any trading which would be for the benefit of the stockholders of the company would also enure directly to the advantage of the Imperial German Government as the holder of the indebtedness represented by such notes and secured by such stock.

(F) Under the Fifth Amendment the Appellant Could Not Be Compelled to Make That Disclosure.

We need only refer very briefly to the general principles heretofore enunciated by this Court in its prior decisions relative to the protection afforded by the Fifth Amendment to the Constitution of the United States against a defendant being compelled to give incriminating evidence against himself. It is not limited to the protection of a defendant upon the witness stand, but extends to any compulsory disclosure of an incriminating character, nor is it necessary that the facts, the disclosure of which is sought to be compelled, would in themselves show the commission of a crime. It is enough if they would *tend* to show such crime or furnish means by which its commission could be ascertained. The leading case is *Counselman* v. *Hitchcock* (1891) 142 U. S. 547, where this Court said on page 585:

> "It is a reasonable construction of the constitutional provision, that the witness is protected 'from being compelled to disclose the circumstances of his offense, or the sources from which, or the means by which, evidence of its commission, or of his connection with it, may be obtained, or made effectual for his connection, without using his answers as direct admissions against him.'"

This Court also quoted at length from the decision of Chief Justice Marshall in *Burr's Trial*, 1 Burr's Trial, 244, as follows:

> "According to their statement" (the counsel for the United States), "a witness can never refuse to answer any question, unless that answer, unconnected with other testimony, would be sufficient to convict him of crime.

> This would be rendering the rule almost perfectly worthless. Many links frequently compose that chain of testimony which is necessary to convict any individual of a crime. It appears to the court to be the true sense of the rule, that no witness is compellable to furnish any one of them against himself. It is certainly not only a possible, but a probable case, that a witness, by disclosing a single fact, may complete the testimony against himself; and to every effectual purpose accuse himself as entirely as he would by stating every circumstance which would be required for his conviction. That fact of itself might be unavailing, but all other facts without it would be insufficient. While that remains concealed within his own bosom, he is safe; but draw it from thence, and he is exposed to a prosecution. The rule which declares that no man is compellable to accuse himself, would most obviously be infringed, by compelling a witness to disclose a fact of this description. What testimony may be possessed, or is attainable, against any individual, the court can never know. It would seem, then, that the court ought never to compel a witness to give an answer which discloses a fact that would form a necessary and essential part of a crime which is punishable by the laws."

In *Wilson* v. *United States* (1911) 221 U. S. 361, this Court declared that the privilege can be asserted although no prosecution had been instituted against the defendant and on page 379 said:

> "The privilege holds although the pursuit of the person required to produce has not yet begun; it is the incriminating tendency of the disclosure and not the tendency of the prosecution against the witness upon which the right depends." (Citing *Counselman* v. *Hitchcock, supra.*)

In its brief below, the Government in support of its contention that the requirement of the report in question from the appellant would not invade the appellant's constitutional right, cited various decisions of State courts, including the following:

People v. *Rosenheimer* (1913) 209 N. Y. 115.
Ex parte Kneedler (1912) 243 Mo. 632.
City of St. Louis v. *Williams* (1911) 235 Mo. 503.
People v. *Henwood* (1900) 123 Mich. 317
People v. *Schneider* (1905) 139 Mich. 673.
State v. *Hanson* (1907) 16 No. Dak. 347.

These cases are distinguishable on one or both of two grounds:

First.—They involve reports relative to the exercise of privileges, such as the use of streets or the sale of liquors, which the State can entirely prohibit and which it can therefore permit upon such conditions as it chooses, even to the waiver of the constitutional privilege with respect to self-incrimination. This is the express basis for the decision in the *Rosenheimer* case, and although some of the other cases cited do not indicate the ground of decision, it is submitted that they fall within the same class and are distinguishable from the present case on this, as well as the other ground hereafter stated.

Second.—It is elementary that a constitutional privilege cannot be asserted as a defense unless the rights of the defendant himself are affected. For this reason a corporation may not raise the ques-

tion as to whether an act requires the giving of incriminatory evidence, as the privileges of the Fifth Amendment do not extend to corporations. See *Wilson* v. *United States, supra.* So also an individual, before he can assert his privilege against self-incrimination, must establish that the evidence which is sought to be elicited would tend to incriminate him. The *Rosenheimer* case and the *Kneedler* case are but illustrations of this principle, because it did not appear in either of these cases that there was any threatened invasion of the rights of the respective defendants. This is recognized by the dissenting opinion of the court below in the *Rosenheimer* case (which was referred to with approval by the Court of Appeals) where it was said (146 App. Div. 875 at page 878):

> "It seems to me that if a compliance with the statute would, under the particular case, have required the witness to be a witness against himself in a criminal case, and so violate his rights under this constitutional provision, he was bound to plead the facts as a justification for a refusal to obey the statute."

In the *Kneedler* case, the Court stated on page 646:

> "But even if a constitutional right be involved, it is not necessary to invalidate the statute to secure its protection. If, in this particular case, the constitutional privilege justified the refusal to give the information exacted by the statute, that question can be raised in the defense to the pending prosecution."

The position of the defendants in these cases was that the inevitable results of the statutes in question would be to compel disclosures of an incriminating character and the respective courts

stated in these cases that the only point before them was whether a statute was unconstitutional where it might possibly, but would not necessarily, require the production of incriminating evidence. Under these circumstances, it was held that this possibility was not sufficient to render the entire statute unconstitutional, but the question was reserved whether in a particular case where the operation of a statute would violate the constitutional rights of a particular defendant, he could not, upon showing such fact, invoke the constitutional privilege. This is the question, and the only question, which the position of the appellant raises with respect to his claim of privilege under the Fifth Amendment.

(G.) THERE WAS HENCE NO PROBABLE CAUSE TO BELIEVE THAT THE APPELLANT HAD BEEN GUILTY OF THE OFFENSE ALLEGED IN THE WASHINGTON INDICTMENT.

If the appellant, on all the evidence before the Commissioner, clearly could not have been compelled under the Fifth Amendment to make the report in question, it follows that there was no probable cause to believe that he was guilty of the offense alleged in the Washington indictment, as that offense is predicated of a duty to make that report.

(2). The District Court Erred in Refusing to Consider the Appellant's Plea as to Self-Incrimination.

The learned District Judge did not consider the evidence presented with respect to this point, as he held that under the decision of *Henry* v. *Henkel*,

235 U. S. 219, the question here presented was not open to consideration in a *habeas corpus* proceeding. It is submitted, however, that the present case does not fall within the purview of the decision in the *Henry* case or the decisions in the other cases relied upon by the Government.

(A) The Appellant Does Not Attack the General Constitutionality of Section 7 (A) of the Act.

It is to be noted at the outset that the appellant does not assert that the provisions of 7 (a) of the Trading with the enemy Act are necessarily or generally unconstitutional but simply that as applied to him under the circumstances presented by the evidence in this proceeding, it is inoperative because of the protection afforded by the Fifth Amendment. At the beginning at least, the Government apparently misconceived the appellant's position on this point and laid great stress upon the extreme caution which a tribunal of first instance should exercise before declaring an Act of Congress unconstitutional.

The position of the appellant is analogous to that of a bankrupt who is required by the provisions of the Bankruptcy Act to file schedules of assets, and it has been held that when it is established that the filing of such schedules would disclose incriminating evidence, then the bankrupt cannot be required to file them. Thus, *in re Podolin,* (District Court, Eastern District of Pa., 1913), 205 Fed. 563, the Court ruled that the bankrupt could omit from his schedule any reference to a transaction which would tend to incriminate him. The Court stated on page 567:

> "(1) The referee's order of May 12, 1913, will be so modified, ex majori cautela, as to

> provide expressly that the bankrupts may omit from their schedules any reference to the transaction with Rudsky. They are still exposed to the danger of prosecution in connection with that transaction, and they should not be compelled to run the not remote risk of having their statements used against them in such a prosecution. The connection between such statements and the evidence required to sustain the prosecution is direct and immediate."

This holding was affirmed by the Circuit Court of Appeals for the Third Circuit. *In re Poolin,* 210 Fed. 97.

See also

> *Corpus Juris,* Sec. 34, p. 38;
> *Brandenburg on Bankruptcy,* 4th Edition 1917, Sec. 398, p. 308.

This aptly illustrates the position of the present appellant. As a bankrupt in the situation above indicated is not compelled to assert the unconstitutionality of the provisions of the Bankruptcy Act in order to justify his refusal to file schedules, when to be compelled to do so would violate his constitutional right against self-incrimination, so the appellant is not here contesting the general constitutionality of the provisions of Section 7 (a) of the Trading with the enemy Act, but is merely asserting that it could not have been intended that the enforcement of this Act should invade his constitutional privilege, and that when he has shown that such an invasion would result if he were required to report specific facts, then he may justify his alleged failure to make such a report.

(B) The Appellant Is Within the Rule in the Henry Case.

We understand that the rule laid down in the *Henry* and allied cases is this: in removal proceedings the writ of *habeas corpus* cannot be made to perform the function of a writ of error; the issues before the Commissioner are whether there is probable cause to believe, on all the evidence before him, that a crime has been committed as alleged in the indictment and that it has been committed in the jurisdiction to which removal is sought; that in the determination of these two basic questions the Commissioner is not required to determine exactly, as a Trial Court, doubtful questions of law or fact; that on questions of constitutionality the presumption is always in favor of the statute; and that consequently when a defendant opposes removal on the ground of the unconstitutionality of the statute under which he is charged, that question will not be passed upon, *unless it is generally, or in the particular case, "plainly and palpably void."* We do not understand that this Court has ever held or implied that a statute to be "plainly and palpably void" (the language of the Court in the *Henry* case) must be a statute palpably unconstitutional on its face, but on the contrary we submit that the result is precisely the same if it is "plainly and palpably void" or inoperative *in the particular case by reason of its effect on the particular defendant.* There is no philosophy demanding that, in removal proceedings, consideration of the constitutionality of a statute should be confined to the former case and not to the latter. On the contrary there would seem

less reason for hesitancy on the part of a committing magistrate to declare a statute inoperative in the case of a particular defendant under the particular facts presented in a given case. The learned Judge of the District Court indicated on the argument below that it was only when a statute was palpably and generally void on its face that the exception in the *Henry* case would apply and stated that the question of constitutionality would not be considered where it depended upon the facts in the particular case. We respectfully submit that in this he fell into error.

We now submit that from the preceding discussion the application of the Fifth Amendment to the present case "plainly and palpably" appears and, therefore, that within the rule in the *Henry* case, section 7 (a) of the Trading with the Enemy Act was "plainly and palpably" inoperative as to this defendant on the evidence before the Commissioner. *It should be remembered that all of the evidence germane to the present point was clear and that the Government offered absolutely no evidence to rebut it and in fact did not attempt to controvert it.*

To summarize the present point on the record before the Court:

First. The evidence as to the appellant's transactions in respect to the McClure Corporation and its stock *is clear and absolutely uncontroverted.*

Second. The proposition of law that these transactions constituted a "trading" for the benefit of an enemy, on all the evidence before the Commissioner, *is very clear and hardly subject to dispute.*

Third. The evidence that no license was obtained or applied for to carry on those transactions is *clear and absolutely uncontroverted.*

Fourth. The commission of an offense under the Act by so trading, *is hence very clear and hardly subject to dispute.*

Fifth. That the disclosure of the facts alleged in the Washington indictment would tend to show the commission of that offense, *is very clear.*

Sixth. That the constitutional protection against self-incrimination therefore applies *is very clear.*

Seventh. The provision of Section 7 (a) of the Act requiring the appellant to make that disclosure is therefore, "plainly and palpably void," as to him in this particular case.

Eighth. Within the doctrine of the *Henry* and allied cases, therefore, the question raised in this Point should have been considered by the District Court and the Commissioner.

Ninth. If that question had been considered, then we submit that the decision should have been that there was no probable cause to believe that the appellant had committed a crime as alleged in the Washington indictment, and therefore that the appellant should not be removed to that jurisdiction.

POINT II.

The District Court erred in holding that there was probable cause to believe that the appellant had committed within the District of Columbia (and only there) the offense charged by the Washington indictment.

The removal of the appellant to the District of Columbia can legally be ordered only if the crime charged by the Washington indictment was committed in that district.

Green v. *Henkel,* (1901) 183 U. S. 249.
Tinsley v. *Treat,* (1906) 205 U. S. 20.
Price v. *Henkel,* (1909) 216 U. S. 488.

(A.) The Appellant Was Not Personally Present in the District of Columbia at the Time of the Alleged Offense.

The Washington indictment averred, with respect to each count, that the appellant "at the District of Columbia and within the jurisdiction of this Court did fail, neglect and omit to report to said Alien Property Custodian" the facts mentioned in that count. It appeared, however, from the testimony of the appellant that he had been a resident of New York City for the past four years and was not within the District of Columbia on December 20, 1917 (R., pp. 36, 84, 95), and the jurisdiction of the Court for the District of Columbia must, therefore, rest upon some ground other than the personal presence of the appellant within the District.

(B.) The Appellant Was Under No Duty to Make the Report in Question in the District of Columbia (and Only There) and the Situs of the Alleged Omission to Perform Such Duty Was Therefore Not Within that District.

The Trading with the enemy Act does not provide where the reports required by Section 7 (a) are to be filed or where they are to be made but merely provides that they are to be made "to the Alien Property Custodian by written statement under oath." For the purpose of fixing the situs of the offense in the District of Columbia, the indictment alleged that at the time of the commission of the offense the Alien Property Custodian had an office in the District of Columbia and at no place else. Most of the evidence before the Commissioner was on this point and he found that up to December 20, 1917, the only office designated or established by the Alien Property Custodian for the making of reports was in Washington, D. C. We understand that the appellant is bound in this proceeding by that finding of fact. On the basis of that finding the learned District Judge held that the Court for the District of Columbia had exclusive jurisdiction of the alleged offense, his theory being that it was the appellant's duty to report to the Alien Property Custodian wherever his office was and at no other place.

Inasmuch as the Act did not provide where the reports were to be filed and did not even fix the location of the office of the Alien Property Custodian but merely provided that the reports should be made "to the Alien Property Custodian by written statement under oath", we respectfully submit that this ruling of the learned District

Judge was erroneous and that the situs of the alleged offense could not be fixed by the mere fact that the Alien Property Custodian actually established his office in Washington for the receipt of reports. The evidence showed that the Alien Property Custodian was outside of the District of Columbia and within the Southern District of New York on official business several times within the period in question (R. p. 165). There is nothing in the Act to prevent the appellant from having made his report "to the Alien Property Custodian by written statement under oath" in New York and it follows that the duty of the appellant to make the report did not arise in Washington (or only there) or that the Court there did not have exclusive jurisdiction.

The decision of the learned District Judge was based upon the decision of this Court in *U. S.* v. *Lombardo* (1916), 241 U. S. 73, and the decision of the Circuit Court of Appeals for the Second Circuit in *New York Central & H. R. R. Co.* v. *United States* (1908), 166 Fed. 267. It is submitted that each of these decisions is distinguishable from the present case on two essential grounds: *first,* the statutes there provided that the reports should be *"filed"* with the Government official, thus importing delivery to and filing by him and hence importing the performance of these acts at his regular office; *second,* the statutes there specifically fixed the location of the office of the Government official and hence fixed the situs of the duty. The Trading with the enemy Act, on the other hand, contains neither of these provisions.

In the *Lombardo* case, the defendant was indicted in the Western District of Washington, un-

der the so-called White Slave Act, for failing to file with the Commissioner General of Immigration a statement in writing, setting forth certain facts with respect to alien women kept in a disorderly house in that District. A demurrer to the indictment was filed on the ground, among others, that the District Court for the Western District of Washington was without jurisdiction as the offense, if any, was committed in the District of Columbia. This Court held that the demurrer to the indictment on this ground was properly sustained, and in defining the offense, the Court quoted (p. 76) from the decision below as follows:

> "The gist of the offense is the failure 'to file with the Commissioner General of Immigration' a statement, etc. By the act of March 3, 1891, chap. 551, sec. 7, page 1085, 26 Stat. at Large, as amended by the act of March 2, 1895, chap. 177, 28 Stat., page 780, the office of the Commissioner of Immigration was created and his office fixed at Washington, D. C."

With reference to the Government's contention that the report might be *filed* by posting the report outside of Washington, D. C., addressed to the Commissioner General at Washington, D. C., and hence that the offense of failing to file would then be committed in the former place, the Court held that this was inconsistent with the meaning of the word "file" used in the statute, and on page 76 said:

> "This contention cannot be reconciled with the language employed in the act. The word 'file' was not defined by Congress. No definition having been given, the etymology of the word must be considered and the ordinary meaning applied. The word 'file' is derived

> from the Latin word 'filum', and relates to the ancient practice of placing papers on a thread or wire for safe keeping and ready reference. Filing, it must be observed, is not complete until the document is delivered and received. 'Shall file' means to deliver to the office and not send through the United States mails. Gates *v.* State, 128 N. Y. Court of Appeals, 221. A paper is filed when it is delivered to the proper official and by him received and filed. Bouvier Law Dictionary; White *v.* Stark, 134 California, 178; Westcott *v.* Eccles, 3 Utah, 258; In re Van Varcke, 94 Fed. Rep. 352; Mutual Life Ins. Co. *v.* Phiney, 76 Fed. Rep. 618."

With reference to the effect of the statutory provision specifically fixing the location of the office of the Commissioner General of Immigration, the Court said on page 77:

> "It may be that where there is a general duty it may be considered as insistent both where the 'actor' is and the 'subject' is, to borrow the Government's apt designations, as in the case of the duty of a father to support his children; and if the duty have criminal sanction it may be enforced in either place. *The principle is not applicable where there is a place explicitly designated by law, as in Sec. 6.*" (Italics ours.)

In the present case there was no place explicitly designed by the statute, and therefore the language of this Court just quoted clearly indicates that the Court for the District of Columbia did not have exclusive (if any) jurisdiction. This decision is not, it is submitted, authority for the proposition that where a statute does not provide where the report is to be made, but simply provides that the report is to be made to an official

by written statement, the duty to report arises where, and only where, that official happens to establish his office.

In the *New York Central* case, the defendant was indicted in the Western District of New York for failing to file certain schedules of rates with the Interstate Commerce Commission. On appeal from conviction the defendant alleged as error that the offense was not committed in that District. The Circuit Court of Appeals sustained his contention on the ground that the Interstate Commerce Act specifically fixed the location of the principal office of the Commission in Washington, D. C., and that this fixed the situs of the duty to report and of the omission to perform such duty. In this case also the statute provided for a *filing* of the report.

In its brief below, the Government endeavored to analogize the present case to the *Lombardo* and *New York Central* cases by arguing that the Trading with the Enemy Act in effect did provide for "filing" the reports and this argument was based on the fact that the subdivision in question of Section 7 (a) concludes with a provision permitting the President to extend the time for "filing the lists or reports." It does not seem, however, that the expression above quoted, used with respect to the extension of time for making the reports, was used in the technical sense suggested. This provision for extension also relates to the lists of stockholders referred to in Section 7 (a) wherein it is provided that corporations, trustees, etc., shall "*transmit to* the Alien Property Custodian a full list sworn to" of enemy stockholders and directors, etc. The result of the Government's argument is thus that "transmit to" means "to file with", an unreasonable construction.

In a further attempt to analogize the present case to the *Lombardo* and *New York Central* cases, the Government claimed that the Trading with the enemy Act fixed the office of the Alien Property Custodian at Washington, D. C., by reason of two provisions of Sections 6 and 15 of the Act as follows:

Section 6 of the Act providing for the appointment of the Alien Property Custodian and stating his powers, contains the following clause:

> "The President may further employ in the District of Columbia, and elsewhere, and fix the compensation of such clerks, attorneys, investigators, accountants and other employees as he may find necessary for the due administration of the provisions of this Act."

A most casual reading of this provision shows that it does not fix the office of the Alien Property Custodian within the District of Columbia.

Section 15 which provides for an appropriation for the carrying out of the Act, states that the amount appropriated is:

> "is to be used in the discretion of the President for the purpose of carrying out the provisions of this Act during the fiscal year ending June thirtieth, nineteen hundred and eighteen, and for the payment of salaries of all persons employed under this Act together with the necessary expenses for transportation, subsistence, rental of quarters in the District of Columbia, books of reference, periodicals, stationery, typewriters and exchanges thereof, miscellaneous supplies, printing to be done at the Government Printing Office, and all other necessary expenses not included in the foregoing."

This also is an attenuated ground on which to fix the situs of the office of the Alien Property Custodian in the District of Columbia. By its very terms the appropriation is not limited to the items enumerated but is to cover "all other necessary expenses not included in the foregoing." It cannot be relied on as fixing the office at this one place. This was not its purpose and it has never been so regarded. Thus, in the report of the Alien Property Custodian to the President dated January 1, 1918, (which was only ten days after the date of the alleged offense) [Appellant's Exhibit E (R., p. 192)], it is stated:

> "On December 8, 1917, the President allotted the sum of $25,000 to the Alien Property Custodian from the appropriation of $100,000,000 for "national security and defense" *to cover all expenses including rental of quarters outside of the District of Columbia.* There has been disbursed out of the allotment the sum of $758.99, making a total disbursement, etc."

We assume that the Government will hardly contend that this expenditure and the subsequent establishment of quarters in New York (R. pp. 56-62, 67-69, 141-144) were unauthorized.

It is submitted, therefore, that the learned Court below erred in holding that the Court for the District of Columbia had exclusive (if any) jurisdiction of the alleged offense and in holding that there was reasonable cause to believe that the alleged offense had been committed in that district.

POINT III.

The District Court erred in refusing to hold that the removal of the appellant to the District of Columbia would involve an invasion of his constitutional right to a speedy trial on the New York indictments.

(A.) The Unreasonable Delay in the Trial of the New York Indictments Caused By These Removal Proceedings.

It appears from the preliminary discussion (*supra*, p. 2) that the appellant was committed on July 6, 1918, in the District Court for the Southern District of New York, and since August 2, 1918, has been preparing for trial on two indictments returned against him by the Grand Jury for that District. We have also pointed out (*supra*, p. 5) that on November 29, 1918, the Court in that district ordered a commission to take testimony abroad for the appellant but that the Government has delayed the execution of this commission and has stated that it will not be in a position to send its representative abroad for the taking of this testimony at least until the 1st of May, 1919, and has intimated that the commission should wait until the removal proceedings and all other preliminary matters are out of the way (*supra, p.* 7). Furthermore, the District Attorney has announced that the trial on the New York indictments will not take place until after the trial on the Washington indictment, and has further admitted that it will doubtless be necessary that a commission be issued to take testi-

mony abroad with respect to the Washington indictment (*supra*, p. 5). The result will necessarily be that in addition to the delay of over nine months which has already occurred, the trial on the New York indictments will be projected into the indefinite future. In view of the time which would be consumed by the appellant's right to move with respect to the Washington indictment, if required to plead thereto, the execution of the commission abroad and the great length of the trial in Washington due to the complicated issues involved, it is almost certain that the appellant's removal to Washington will delay the trial of the New York indictments until around the first of January, 1920, or eighteen months after the appellant was first committed in New York. For at least half of this delay the removal proceedings will be directly responsible, and it is submitted that this is an invasion of the constitutional rights of the appellant to a speedy trial in New York.

We recognize that a defendant ordinarily has no constitutional right to be tried first in the jurisdiction where he is first indicted but that his right to a speedy trial on either indictment is necessarily relative, dependent on all the circumstances of the case. In *Beavers* v. *Haubert*, 198 U. S. at page 87, this Court said:

> "The right to a speedy trial is necessarily relative. It is consistent with delays and depends upon circumstances. It secures rights to a defendant. It does not preclude the rights of public justice. It cannot be claimed for one offense and prevent arrest for other offenses; and removal proceedings are but process for arrest—means of bringing a defendant to trial."

With full recognition of this principle, we submit that the circumstances of the present case will not warrant the further delay contemplated by the Government, and that to permit that delay will amount to a denial of the appellant's rights of a speedy trial accorded by the Fifth Amendment.

In *Haas* v. *Henkel,* (1909) 216 U. S. 462, this Court said at p. 475:

> "To say that the accused had a right to a speedy trial of the New York cases may be conceded. If unreasonable delay should result from continuances due to an election to try the same accusations in another district, a very different question might arise, calling for relief through habeas corpus. But such a possibility affords no legal reason for denying the right of removal."

Here the unreasonable delay is not a possibility, but must inevitably result.

In the case of *In re Tillinghast* (District Court for the District of Rhode Island) (1916), 233 Fed. 712, the Court stated at p. 713:

> "The fact that indictments for another offense are now pending in this district is not, under the present circumstances, a sufficient reason for a refusal to issue warrants of removal. At the hearing an inquiry was made by the court whether the defendants claimed the right to a speedy trial of the indictments pending in this court, and whether they claimed that the right to such speedy trial would be unreasonably delayed by the removal; but, though opportunity was offered, no such claim was made.
>
> There appears, therefore, no sufficient reason for denying the petition for warrants of removal. Haas *v.* Henkel, 216 U. S. 462, 475."

In the present case the appellant has consistently maintained throughout these proceedings, before the Commissioner, in his petition for writs of *habeas corpus* and *certiorari* in his briefs submitted to the Commissioner and to the District Court, and in his assignment of errors herein, that a trial of the New York indictments would be unreasonably delayed by this removal and hence that the removal would violate his constitutional right to a speedy trial.

(B.) This Point is Properly Raised in These Habeas Corpus Proceedings.

We understand that the Government's position on this point is that it should be raised by the appellant, not in these proceedings, but in a separate petition addressed to the District Court for the Southern District of New York demanding a speedy trial there.

This argument would seem to be sufficiently answered by the language of this Court in Haas *v.* Henkel just quoted (*supra*, p. 48) and furthermore, considered on general principle, it is unsound. Upon the present writ of *habeas corpus* the appellant is clearly entitled to relief from any restraint imposed in violation of his constitutional rights. He is now (though enlarged on bail to await this Court's decision) under restraint by virtue of, and as part of, the removal proceedings. If, therefore, the continuation of that restraint through the medium of his actual removal from New York will violate his constitutional right to a speedy trial, he is entitled to relief through this writ of *habeas corpus*.

In fact, it would seem that the present writ is

the only remedy that the appellant has, for if he is removed from New York to Washington, an appeal to the New York court for a speedy trial there would be futile, for that Court cannot compel the trial of a defendant who is in another jurisdiction. For like reason no writ of *habeas corpus* would lie in New York. On the other hand, there would be no way in which the appellant by petition to the Washington court or by writ sued out there could compel a prompt trial in New York.

It is submitted, therefore, that the removal of the appellant will violate his constitutional right to a speedy trial of the New York indictments and that the present proceeding is the proper, and indeed the only, one in which he may raise this question.

POINT IV.

Before granting its consent to the removal of the appellant from the Southern District of New York, the District Court should have required the Government to state its reasons for demanding such removal and should have given the appellant an opportunity to reply thereto.

(A) The Consent of the District Court to the Removal of the Appellant was Necessary.

Under the general principle that, as between courts of equal authority, the one whose jurisdic-

tion first attaches is entitled to maintain it and that its consent is therefore necessary before that jurisdiction can be ousted, the appellant maintained before the Commissioner that it was incumbent upon the Government to secure the consent of the District Court for the Southern District of New York to the removal of the defendant because the jurisdiction of that court had first attached by reason of the appellant's commitment on the New York indictments (R., p. 167).

The general rule is stated in *In re Johnson* (1897), 167 U. S. 125, as follows:

> "Ever since the case of *Abelman* v. *Booth*, 21 How. 506, it has been the settled doctrine of this court that a court having possession of a person or property cannot be deprived of the right to deal with such person or property until its jurisdiction is exhausted, and that no other court has the right to interfere with such custody or possession."

It is submitted that the general principle of jurisdiction is not affected, as between Federal Courts of different districts, by the provisions of section 1014 of the Revised Statutes which provides for the removal of the accused from one district to another, for otherwise the exercise of its jurisdiction and functions by any Federal Court would be subordinate to, and subject to interruption at, the pleasure of the Attorney-General whenever additional charges in another court enabled him to institute removal proceedings.

The only references to this point which we have found among the opinions of this Court are in *Beavers* v. *Haubert* (1905), 198 U. S. 77, *Haas* v. *Henkel* (1910), 216 U. S. 462, and *Peckham* v. *Henkel* (1910), 216 U. S. 483.

In the *Beavers* case the Court said on page 86:

> "The Circuit Court, as we have seen in the case at bar, consented to the removal of the appellant, and we are not called upon to decide whether the Government had the right of election, without such consent, to proceed in New York or the District of Columbia."

In the *Haas* case also the Court pointed out that the consent of the Circuit Court had been obtained.

In the *Peckham* case the consent of the Circuit Court had not been obtained but the Court held that its consent was not necessary since the question was not whether the defendant should be tried in that district or in the district to which removal was sought but merely the question of whether the Government, having first sought to remove him from the Northern District of New York to the District of Columbia, could subsequently remove him from the Southern District of New York to the District of Columbia without having first obtained the consent of the court for the Northern District of New York.

This Court held that such consent was not necessary and on pages 486, 487, said:

> "The present case differs upon this point from that of Beavers *v.* Haubert, in that the consent of the court of prior jurisdiction was not obtained as in that. In that case the court reserved the question as to 'whether the Government had the right of election, without such consent', to proceed in either of the two districts in which indictments were pending. But there is here no question of electing whether to try in the Northern District of New York or in the District of Columbia, but whether it would elect, between the two re-

moval proceedings, the object of each being to remove the appellant to the same place for trial. The institution of the second removal proceeding without the consent of the Circuit Court for the Northern District of New York may very well be regarded as an election by the United States, the plaintiff in both cases to abandon the first complaint. But aside from this, and assuming, without deciding, that the removal proceedings were in disregard of the prior proceedings, and therefore erroneous, the jurisdiction of the commissioner was not affected. No constitutional right of the appellant was invaded. A petition for a writ of *habeas corpus* is not a writ of error. The error, if any, was a mere disregard of a rule of comity, which is not reversible in a proceeding of this character."

(B) How the Consent of the District Court Was Obtained.

The Commissioner ruled that the question of consent of the District Court could be passed upon by that court when application to it for an order of removal was made. In the argument before the District Court in the *habeas corpus* proceedings the point was raised and the appellant pointed out that the prior practice of the Attorney General, as evidenced by the reports in *Beavers* v. *Haubert* and *Haas* v. *Henkel, supra,* had been to explain to the Court the reasons why its consent to the removal proceedings was requested. In the opinion of this Court in the *Beavers* case, Mr. Justice McKenna, delivering the opinion, stated in the first paragraph, with reference to the proceedings first instituted (p. 84):

"The District Attorney, however, announced an intention not to proceed further

with the prosecution, and announced further that he intended to prosecute proceedings to remove appellant to the District of Columbia for trial. This was done, and with the consent of the court.

In the opinion of this Court in the *Haas* case, Mr. JUSTICE LURTON, delivering the opinion, stated near the beginning (pp. 471, 472):

"Pending these removal proceedings, and before any hearing, the United States district attorney moved the Circuit Court in which the New York indictments were pending for consent to the prosecution of these removal proceedings, and consent was granted over the objection of Haas. This application was made by direction of the then Attorney-General of the United States, who, in an official communication, said 'that should the trial here (Washington) result in acquittal or conviction, the indictments in New York will be dropped.' Among other reasons for desiring the trial in Washington, aside from mere questions of convenience to Government officials and witnesses, the Attorney-General said:

'1. The indictments charge a conspiracy on the part of the several defendants to cause to be issued at Washington by the Bureau of Statistics for the Department of Agriculture of false cotton crop reports, and that Holmes, who was then Associate Statistician of the Bureau of Statistics, was to furnish to his co-conspirators in advance of their official issue the information to be contained in the reports. While, owing to the commission in your district of acts in pursuance of the conspiracy, the court in your district has jurisdiction of the offense, yet the conspiracy was in all probability actually formed in Washington. The false reports were prepared and issued here

and the advance information was given out here. The real situs of the crime then is in the District of Columbia, and the trials should therefore be had here.

'2. The defendant Holmes has been arrested and is now awaiting trial on the indictments pending in the District of Columbia. There are two series of these indictments, one against Price, Haas and Holmes, and the other against Haas, Peckham and Holmes. It would be a great convenience and a vast saving to the Government to try the defendants together. Even this would necessitate two trials, one in each series. If the non-resident defendants are not removed to Washington, four trials would be needed, two in Washington and two in New York.' ''

In the above cases the Government frankly, fully and in open court stated its reasons for requesting the Court of prior jurisdiction to surrender the defendant and permit him to be removed. *In the present case the Assistant District Attorney, notwithstanding the insistence of the appellant to know the reasons for the attempted removal, so that he could address the Court on the question of whether they should prevail, not only carefully refrained from stating them but at the argument before the District Court expressly requested the Court not to compel him to state the reasons!* And this position was taken in spite of the fact that in the present case (unlike most, if not all, of the previous removal cases, where the indictments in the two jurisdictions were handed down within a short time of each other) the appellant had been led to believe that his trial would be in New York, had engaged counsel and undergone the expense of preparing for trial there, had moved for and obtained the consent of the Court there for the issuance of a commission

to take testimony abroad and then, without a word of explanation and after a period of several months, had suddenly been confronted by this attempt to remove him to a strange jurisdiction, a move which would subject him to the additional expense and burden of engaging new counsel and of transporting his witnesses and documents to the new jurisdiction, in which, however, from the nature of the case, he would be able effectively to assemble only part of the evidence he should have for the conduct of his defense in court. And all this is attempted on the basis of new charges which, though technically different, involve the same transaction and the same major issues! Can it be that under such circumstances the Government may properly insist that its reasons for this extraordinary and apparently oppressive action should be kept in the dark and unknown to the appellant? We think not and respectfully venture to suggest to this Court that it disapprove such practice. If the District Court had a discretion to grant or withhold its consent to removal and the exercise of that discretion was so vital to the appellant, we are unable to see any reason why the furtherance of justice required that the ordinary rule should not be followed that a party invoking the action of a court in his favor should state his grounds therefor and that the other party should be given an opportunity to reply thereto.

(C) This Question Is Not Academic.

It may be argued that as the District Court has given its consent, the reasons actuating it are immaterial and that in any event this Court intimated in its opinion in the *Peckham* case (quoted above, p. 52) that the appellant has no right in

habeas corpus proceedings of this nature to raise such a question. But in *Hyde* v. *Shine* (*supra*, p. 9) this Court expressed its opinion regarding certain phases of removal practice and if the Court will in its opinion in the present case announce that under circumstances such as were presented here, it would have been better practice for the Government to have stated its reasons for requesting the District Court's consent to the removal of the appellant and to have given the appellant an opportunity to reply thereto, we feel confident that the District Court will, before the warrant of removal is signed, hold a hearing accordingly and grant the appellant the opportunity which he deems so important. Certainly the consent which the District Court has already given is not irrevocable until the warrant of removal is signed and executed.

CONCLUSION.

The order of the District Court should be reversed and the appellant discharged from custody.

Respectfully submitted,

STEPHEN C. BALDWIN,
FREDERICK J. POWELL,
JOHN M. LOWRIE,
Of Counsel.

April 11, 1919.

INDEX.

	Page.
The origin of the question	1
The statement of the case	2
The contentions of the parties	6
Argument:	
I. A prima facie case was made before the Commissioner	7
II. The grounds of alleged error are not open in this proceeding	10
III. The constitutional points raised by appellant are neither open nor valid	13
IV. There is nothing in appellant's point with respect to the alleged duty to require the Government to state its reasons for seeking removal	17
Conclusion	18

AUTHORITIES CITED.

Ashton v. *State*, 11 S. W. 637	16
Ex parte Royall, 117 U. S. 241	13
Ex parte Kneedler, 243 Mo. 632	16
Haas v. *Henkel*, 216 U. S. 462	7, 8, 9, 12
Henry v. *Henkel*, 235 U. S. 219	10, 12, 13
Hyde v. *Shine*, 199 U. S. 62	8, 9, 12
In re Palliser, 136 U. S. 257	9
Jones v. *Perkins*, 245 U. S. 390	10
Matter of Harris, 221 U. S. 274	16
New York, etc., R. R. v. *United States*, 166 Fed. 267	9
Peckham v. *Henkel*, 216 U. S. 483	12, 17
People v. *Rosenheimer*, 109 N. Y. 115	16
Price v. *Henkel*, 216 U. S. 488	16
St. Joseph v. *Levin*, 128 Mo. 588	16
St. Louis v. *Williams*, 235 Mo. 503	16
State v. *Hanson*, 16 N. D. 347	16
United States v. *Lombardo*, 241 U. S. 73	9

In the Supreme Court of the United States.

OCTOBER TERM, 1918.

EDWARD A. RUMELY, APPELLANT,
v.
THOMAS D. McCARTHY, UNITED STATES Marshal for the Southern District of New York, and Samuel M. Hitchcock, United States Commissioner for the Southern District of New York. | No. 874.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

BRIEF FOR THE APPELLEES.

THE ORIGIN OF THE QUESTION.

Edward A. Rumely was indicted in the Supreme Court of the District of Columbia for an alleged violation of the Act of October 6, 1917, the Trading with the Enemy Act, so called. This indictment is called in the record the "Washington indictment." His removal to the District of Columbia was the subject of proceedings begun before a United States Commissioner in the Southern District of New York. After hearing, the Commissioner issued his warrant of commitment. Rumely then sued out, in the District

Court, a writ of *habeas corpus* and, in aid thereof, one of *certiorari*. By virtue of the latter the entire record before the Commissioner, including the testimony taken, was brought up. After further hearing, the District Judge dismissed the writs and, upon application by the District Attorney, ordered a warrant for removal to issue. Rumely now appeals to this court.

The opinion of the District Court appears in the record (pp. 202–206).

As bearing upon certain contentions made by appellant it may be added that the District Court formally entered its consent to the removal despite the pendency of certain indictments in that district against appellant. These indictments are referred to in the record as the New York indictments. It also directed the Government to inform Rumely, within 30 days after he should have pleaded to the Washington indictment, as to which indictment it was intended by it first to move for trial.

THE STATEMENT OF THE CASE.

The indictment in the District of Columbia is set out in the record. (R., 8–10.) It is in two counts. Each count recites the existence at the time of the offense charged of a state of war between the United States and the Imperial German Government. Each sets out that at the time in question the act of October 6, 1917, was in effect. In each it is alleged that the Alien Property Custodian, an officer of the United States appointed under the authority of that statute, had, at the time of the offense, his office for the

transaction of official business at the District of Columbia and at no other place.

The counts differ as to the particular violation of the statute charged. In the first count reference is made to the fact that the statute made it the duty of every person in the United States who held or controlled any property of or for an enemy of this country to report that fact to the Alien Property Custodian within a certain period which is alleged to have expired upon December 20, 1917; it is then charged that on October 6, 1917, Rumely had custody and control of certain stock of the S. S. McClure Newspaper Corporation, a corporation of the State of New York, which, as Rumely well knew, belonged to the Imperial German Government; and that Rumely wilfully "at the District of Columbia and within the jurisdiction of this court" failed, neglected, and omitted to report that fact within the time allowed for that purpose and had continued so to neglect and omit until the date of the indictment.

In the second count reference is made to the requirement of the statute that anyone who was "in any way indebted" to an enemy should make a similar report of the fact to the Alien Property Custodian and it is charged that Rumely well knew himself to be indebted to the Imperial German Government in the amount of $1,451,700, but nevertheless wilfully neglected, omitted, and failed to report that fact to the Custodian either during the time allowed for that purpose or since.

For the information of the Court, the appropriate provisions of the statute, which are summarized in the indictment, are set out in the margin.[1]

Before the Commissioner, Rumely admitted his identity and offered no evidence to meet the *prima facie* case made by producing an exemplified copy of the indictment, with respect to the facts that:

(1) On October 6, 1917, Rumely, as he well knew, held the stock of the New York corporation for the German Government and did not, within the time allowed by law, report the fact to the Custodian.

---

[1] Section 7 (*a*), par. third:

"Any person in the United States who holds or has or shall hold or have custody or control of any property beneficial or otherwise, alone or jointly with others, of, for, or on behalf of an enemy or ally of enemy, or of any person whom he may have reasonable cause to believe to be an enemy or ally of enemy and any person in the United States who is or shall be indebted in any way to an enemy or ally of enemy, or to any person whom he may have reasonable cause to believe to be an enemy or ally of enemy, shall, with such exceptions and under such rules and regulations as the President shall prescribe, and within thirty days after the passage of this act, or within thirty days after such property shall come within his custody or control, or after such debt shall become due, report the fact to the Alien Property Custodian by written statement under oath containing such particulars as said custodian shall require. The President may also require a similar report of all property so held, of, for, or on behalf of, and of all debts so owed to, any person now defined as an enemy or ally of enemy, on February third, nineteen hundred and seventeen: *Provided*, That the name of any person shall be stricken from the said report by the Alien Property Custodian, either temporarily or permanently, when he shall be satisfied that such person is not an enemy or ally of enemy. The President may extend the time for filing the lists or reports required by this section for an additional period not exceeding ninety days."

Section 16:

"That whoever shall willfully violate any of the provisions of this act or of any license, rule, or regulation issued thereunder, and whoever shall willfully violate, neglect, or refuse to comply with any order of the President issued in compliance with the provisions of this act shall, upon conviction, be fined not more than $10,000, or, if a natural person, imprisoned for not more than ten years, or both; and the officer, director, or agent of of any corporation who knowingly participates in such violation shall be punished by a like fine, imprisonment, or both: * * *"

(2) On October 6, 1917, Rumely, as he well knew, was indebted to the German Government in the sum of $1,451,700 and did not, within the time allowed by law, report the fact to the Custodian.

Evidence (which is printed in the record, pp. 21–202) was introduced in support of various contentions of the appellant. He sought, for example, to challenge the averment of the indictment that the official office of the Custodian at the time in question was in the District of Columbia only. It is unnecessary to review this evidence in detail. The Commissioner and the District Court (R. 205) found that "up to December 20, 1917, when Rumely's offense was complete, the office of the Alien Property Custodian was at Washington, D. C.," and not elsewhere.

In support of a constitutional objection which will be later stated, appellant offered evidence that, beginning on November 12, 1917, he indorsed and arranged for the discount of certain notes and did certain other business acts for the benefit of the New York corporation whose stock, it is charged, he was holding for the German Government.

Finally there was brought before the Commissioner and the Court the fact that the indictments against Rumely, known as the New York indictments, were pending in the Southern District of New York. These indictments appear in the record (pp. 169–180). Generally speaking, they grow out of the same transactions as the Washington indictment. In the first of them, however, the charge is that Rumely and another conspired to omit to report certain facts

to the Custodian. In the second, Rumely is charged with perjury in making a certain report to the Custodian which was known by him to be false.

THE CONTENTIONS OF THE PARTIES.

Upon the foregoing case, appellant contends that the action of the District Court in dismissing appellant's writ of habeas corpus was in error because, as he says:

1. The provisions of the Trading with the Enemy Act upon which the indictment is predicated can not constitutionally be applied to a person in the situation of the appellant.

2. The Commissioner did not have probable cause to believe that appellant had committed any offense cognizable by the courts of the District of Columbia.

3. Under the circumstances of the case removal to the District of Columbia will impose unnecessary and improper hardship and expense upon appellant and will involve a denial of his constitutional right to a speedy trial upon the New York indictments.

4. That the District Court was in error in not requiring the Government to state its reasons why it desired removal.

In reply the United States points to appellant's admission of his identity, to his failure to controvert the allegation of his failure to comply with the positive requirement of the statute, and to the specific finding against him upon the issue raised by him as to the location of the office of the Custodian. These circumstances, it says, show probable cause suffi-

cient to warrant the action of the Commissioner and the Court. Of the remaining contentions made by appellant, it says that they represent only another attempt to substitute a hearing upon *habeas corpus* for a writ of error and to supersede by the *habeas corpus* tribunal the functions of the trial Court. In view of the repeated declarations of this Court that in the absence of rare and special circumstances not present here it will not examine upon such a proceeding matters which properly should be dealt with in the orderly processes of trial and appeal, it says that this case is devoid of merit, if not indeed frivolous.

ARGUMENT.

I.

A PRIMA FACIE CASE WAS MADE BEFORE THE COMMISSIONER.

The duty of a United States Commissioner in removal proceedings was defined in *Haas* v. *Henkel*, 216 U. S. 462. If the United States Court for the district to which removal is sought has jurisdiction over the accusation made in that district and the case is there triable, the Commissioner has no discretion, if there has been a showing of probable cause. His duty is to detain the accused and that of the District Judge is to issue his warrant for the removal of the accused to the district where the trial is to be had.

In this case an indictment returned in the District of Columbia was presented to the authorities in the Southern District of New York. It charged appel-

lant with having wilfully neglected and omitted to report to the Alien Property Custodian the facts as to the enemy ownership of certain property held by appellant and as to the existence of an indebtedness owing from appellant to an enemy. Such a neglect and omission is made an offense by sections 7 (a) and 16 of the Trading with the Enemy Act. The presentation to the Commissioner of the indictment made a *prima facie* case against the accused. *Hyde* v. *Shine,* 199 U. S. 62, 84, *Haas* v. *Henkel, supra.* No evidence was offered to controvert it.

The only issue of fact tendered by the accused with respect to any matter appearing upon the face of the indictment was made by his challenge of the averment that the office of the Custodian for the transaction of official business was in the District of Columbia. Upon this issue the Commissioner made a finding of fact adverse to the appellant. That conclusion is not reviewable upon *habeas corpus. Hyde* v. *Shine, supra,* 84. But were it reviewable, the District Judge found in terms that the finding of the Commissioner that the office of the Custodian was, at the time in question, in the District of Columbia and nowhere else, was right. (R. 202.)

Under these circumstances the utmost that remained open to consideration by the Commissioner was whether the offense charged was indictable and triable in the District of Columbia.

Looking again at the facts established by the present record, the thing with which appellant is charged is his failure to perform his statutory duty of

reporting certain facts to the Alien Property Custodian. Certainly one place where he failed to perform this duty, which in fact was wholly omitted, was in the District of Columbia, where the Custodian officially was at the time when the duty was left unperformed. In view of *Haas* v. *Henkel*, supra, *Hyde* v. *Shine*, supra, In re *Palliser*, 136 U. S. 257, and other cases familiar to this Court this of itself is enough. But it is affirmatively established that the Custodian had no office other than that in the District of Columbia. It was there that he had his official being. It was there and there only that the offense was committed. This is clear as a matter of reason and has the support of authority. *United States* v. *Lombardo*, 241 U. S. 73; *New York, etc., R. R.* v. *United States*, 166 Fed. 267. In each of these cases there was a failure by a person resident elsewhere than in Washington to file with an officer of the United States whose office was located in Washington a statement required by statute to be filed with that officer. In each case demurrers to indictments found in districts other than the District of Columbia were sustained upon the ground that the offense was committed in the District of Columbia and there alone.

It follows therefore that there existed all the elements which make it the duty of the Commissioner to detain and of the District Judge to order the removal of the accused.

It remains only to inquire whether any of the objections raised by appellant with respect to mat-

ters which do not appear upon the face of the indictment are open to him upon *habeas corpus* proceedings and, if so, whether any of them require his discharge. In the view of the United States neither of these things is true.

II.

THE GROUNDS OF ALLEGED ERROR RELIED UPON BY APPELLANT ARE NOT OPEN TO HIM IN THIS PROCEEDING.

While the exact limits of the field of inquiry open upon *habeas corpus* proceedings have been said by this Court not to have been defined by a hard and fast rule (*Henry* v. *Henkel*, 235 U. S. 219), it is perfectly clear that those limits are exceedingly narrow except in certain classes of cases described as rare and exceptional. *Jones* v. *Perkins*, 245 U. S. 390. Apart from these exceptional cases whose nature is indicated in *Henry* v. *Henkel*, 235 U. S. 219, 228, and the authorities there cited and of which this case is not one, this Court has repeatedly said that it will not permit a hearing upon *habeas corpus* to be used as a substitute for the functions of the trial court nor as a writ of error. "The general rule is that on such applications the hearing should be confined to the single question of jurisdiction and even that will not be decided in every case in which it is raised." *Henry* v. *Henkel*, ubi supra.

In that case, this Court did refuse to pass upon the jurisdictional question sought to be raised. There was an earnest contention that the statute upon

which the indictment there was based was unconstitutional if so construed as to be applicable to the facts alleged. In a somewhat weaker form such a contention is made in this case. But the Court said (230), after speaking of the presumption in favor of the constitutionality of the enactments of the Congress, that it would not be proper for a committing magistrate to treat as invalid a statutory declaration of what should constitute an offense "except in those rare and extreme circumstances in which the act was plainly and palpably void." It added that the same rule controlled the District Court upon an application like this for discharge upon a writ of *habeas corpus* and was equally applicable to this Court upon appeal.

It is unnecessary at so late a day again to collate the decisions in which this rule, which rests upon manifest considerations important to the orderly conduct of the business of the Courts, has been developed and announced. It is rather interesting, however, to notice that almost every alleged ground of error now relied upon has at one time or another been said by this Court to be no warrant for release upon *habeas corpus*.

Mention of the constitutional point, which appears to be that principally urged, has already been made. The contention that the granting of removal to the District of Columbia will infringe appellant's right to a speedy trial of the New York indictment is like one of those urged upon this Court in *Haas* v.

Henkel, 216 U. S. 462. (See page 475 and cases there cited.) In that case also there was some question made respecting the consent of the New York court to the removal despite the pendency of indictments before it. That question is here raised. Here, as in the *Haas* case, consent has been granted in terms (R. 207). In *Peckham* v. *Henkel*, 216 U. S. 483, it had not but removal was sustained. The complaint that removal involves hardship to the appellant has been repeatedly made. *Haas* v. *Henkel*, ubi supra; *Hyde* v. *Shine*, 199 U. S. 62, 78; *Henry* v. *Henkel*, 235 U. S. 219, 229.

In this connection it is fair to remark that there is here no question of removal across the continent as in *Hyde* v. *Shine* in which removal was none the less sustained.

Finally the pendency of other indictments in the place of appellant's residence presents nothing new. Whereas here the indictment in the District of Columbia charges a manifestly different offense from that charged in the New York indictments, it is noteworthy that in *Haas* v. *Henkel*, the indictment in the domicil of accused was for the identical offense charged in that upon which removal was, with success, demanded.

It follows from what has been said that the alleged grounds of error relied upon by appellant relate to matters which must be raised if at all in the trial court and are not open on this appeal.

III.

THE CONSTITUTIONAL POINTS RAISED BY APPELLANT ARE NEITHER OPEN NOR VALID.

It is true that in *Henry* v. *Henkel* this Court implied that it might give weight, even upon *habeas corpus* proceedings, to a constitutional objection if it appeared that the case was one of "those rare and extreme cases in which the act was plainly and palpably void." In that case, however, the Court refused to consider upon *habeas corpus* the constitutional question raised and referred with emphasis to *Ex parte Royall*, 117 U. S. 241, not only because of the applicability of its reasoning but because of the fact that in that case the statute upon which the charge was based was eventually held to be void.

It is deemed proper therefore to discuss the contention of appellant only so far as to show that the statute is far from being plainly and palpably void. It is unnecessary to say that, at what it believes to be the proper time, the United States is prepared to undertake to demonstrate fully that no substantial doubt as to the validity of the statute exists.

Appellant does not contend that the statute is generally void but only that by reason of special circumstances it is void as to him as involving a violation of the fifth amendment. The argument upon which this, apparently the principal contention of the appellant, is based is somewhat intricate and not without ingenuity.

It begins by remarking that the allegation of the Washington indictment as to the German ownership

of stock held by appellant in the New York corporation is by reason of appellant's failure to controvert it "*for the purposes of this proceeding*, to be taken as true," [His italics.] Then he says that he himself offered evidence which the government did not contradict, that beginning on November 7, 1917, he did acts which are "trading" on behalf of the New York corporation within the meaning of that word as used in section 3 of the Trading with the Enemy Act. This he says was trading on behalf of an enemy because of the enemy interest in the stock of the corporation. Since trading on behalf of an enemy is made unlawful by section 3 of the statute, and therefore an offense by section 16, he says that he has proved that he is guilty of that offense, if in fact the stock was owned, as alleged, by the German Government. From all this he concludes that he could not constitutionally be required to make the report demanded by section 7 (a), since it would tend to disclose his commission of the crime which, assuming his premises, he now confesses.

Since the allegation of the Washington indictment is the foundation upon which this superstructure is erected it is important to notice that that allegation is simply that appellant had custody of "certain stock" of the New York corporation. (R. 9.) The number of shares or the proportion which these holdings bore to the total capital stock of the New York corporation was not alleged, because, of course, it was not material whether it was much or little.

Appellant's contention is, therefore, that every person who after November 5, 1917, did any act whatever for any corporation in which any stock ownership however small was in enemy hands was guilty of trading with the enemy unless a license so to act was first obtained.

The short answer to this contention, which is a vital link in appellant's argument, is that Congress in section 2 defined "enemy" for the purposes of the statute, and in so doing said that it should include—

> any corporation incorporated within such territory of any nation with which the United States is at war or incorporated within any country *other than the United States* and doing business within such territory. [My italics.]

Congress thus made it clear that an American corporation was not an enemy whatever might be the ownership of its stock, and it was careful to provide (sections 7a and 7c) for the sequestration and control by the Alien Property Custodian of whatever stock of such a corporation should be found to be enemy owned. The groundwork of appellant's contention therefore falls.

Apart from this, however, it by no means follows that, because for purposes of civil administration a person is required under penalty to make reports which under some conditions might lead to the discovery that the person reporting had committed a crime, the statute is unconstitutional. Automobile drivers must display license numbers (*St. Louis* v.

Williams, 235 No. 503); they must give their names and residences to those whom they injure or to police officers (*Ex parte Kneedler*, 243 Mo. 632; *People* v. *Rosenheimer*, 209 N. Y. 115); pawnbrokers must keep books and exhibit them (*St. Joseph* v. *Levin*, 128 Mo. 588); butchers must report the brands of cattle which they slaughter (*Ashton* v. *State*, 11 S. W. 1889); bankrupts must surrender their books of account (*Matter of Harris*, 221 U. S. 274); and persons holding receipts from the Federal Internal Revenue Bureau must make the fact public, although it may be that under the law of the State the selling of liquor is absolutely prohibited under heavy penalties (*State* v. *Hanson* 16 N. D. 347).

Examples might be multiplied but it is deemed unnecessary. Certainly the statute is not palpably void.

It may be added that appellant's argument has no application to the second count of the Washington indictment. That circumstance in itself renders it irrelevant to the present question. *Price* v. *Henkel*, 216 U. S. 488, 490.

Appellant's second constitutional point that he is being deprived of a speedy trial upon the New York indictment need not long detain the Court. If in fact it turns out that he is improperly delayed his remedy is by addressing the Court in New York in a suitable but independent proceeding. The authorities already cited demonstrate that this is not a valid objection to removal and arraignment.

IV.

THERE IS NOTHING IN APPELLANT'S POINT WITH RESPECT TO THE SUPPOSED DUTY OF THE DISTRICT COURT TO REQUIRE THE GOVERNMENT TO STATE THE REASONS FOR ITS REQUEST THAT THAT COURT CONSENT TO THE REMOVAL.

The District Court, as pointed out, did in terms consent. Apparently the appellant thinks that it was improvident in so acting. The matter is purely one of comity and has but a limited application in criminal cases. *Peckham* v. *Henkel*, 216 U. S. 483, 486, and cases cited. Since the District Judge was apparently satisfied, it is a little difficult to understand what right the appellant claims or upon what it is supposed to be based.

As already pointed out the indictment in the District of Columbia is for an offense different in character and provable by different testimony from that in New York. The District Judge has directed the government to inform appellant, after he shall have pleaded to the Washington indictment which case it proposes first to move for trial. If, however, reasons are necessary, it may be suggested that since appellant insists that the underlying facts of the two indictments are the same and emphasizes the fact that he has obtained from the New York court a commission for the taking of testimony abroad, it is obviously in the interests of justice both to the government and to the appellant that if a similar application is to be made in the case pending in the District of Columbia it should be made and the commission, if one is to issue, issue and be executed

simultaneously with that obtained in New York. There are other and controlling reasons why it was deemed proper to procure indictment in the District of Columbia, to demand removal and to ask the consent of the Court in New York thereto but it is not deemed necessary or proper that they should be disclosed.

CONCLUSION.

The appeal, therefore, should be dismissed.

LaRue Brown,
Assistant Attorney General.

April, 1919.

○

RUMELY *v.* McCARTHY, UNITED STATES MARSHAL FOR THE SOUTHERN DISTRICT OF NEW YORK, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

No. 874. Submitted April 16, 1919.—Decided June 2, 1919.

Under an indictment charging violations of the Trading with the Enemy Act of October 6, 1917, c. 106, 40 Stat. 411, in failing to report enemy property and credits, the contention, raised before a commissioner in removal proceedings and based on the allegations and defendant's uncontradicted evidence, that the report, if required, would show defendant guilty, under the same act, of trading with the enemy, and thus compel him to be a witness against himself, contrary to the Fifth Amendment, is matter for defense at the trial and does not go to the issue of probable cause. P. 287.

A finding of fact made by a commissioner in removal proceedings and supported by competent evidence is not reviewable in *habeas corpus*. P. 289.

The duty, imposed by the Trading with the Enemy Act, § 7a, to make report of enemy property and credits to the Alien Property Custodian, involves the duty to make it at his office, and a wilful failure so to make it is an offense, committed in the district where the office is established. *Id.*

Where defendant was indicted in the Southern District of New York for a conspiracy to omit making such a report and for perjury in verifying a false one, *held*, that it was discretionary with the court of that district, without requiring a statement of reasons from the Government, to order his removal under a later indictment charging failure to make the report in the District of Columbia, and that the discretion was not reviewable by this court in *habeas corpus*. P. 289.
256 Fed. Rep. 565, affirmed.

THE case is stated in the opinion.

Mr. Stephen C. Baldwin for appellant. *Mr. Frederick J. Powell* and *Mr. John M. Lowrie* were on the brief.

Mr. Assistant Attorney General Brown for appellees.

MR. JUSTICE PITNEY delivered the opinion of the court.

This is an appeal from a final order of the District Court for the Southern District of New York dismissing writs of habeas corpus and certiorari sued out by appellant to determine the legality of his detention under a commitment issued by appellee Hitchcock, as United States Commissioner, to hold appellant in the custody of the United States Marshal pending the issuance of a warrant for his removal to the District of Columbia to answer an indictment returned against him by the grand jury of that District for an alleged violation of the Act of Congress of October 6, 1917, c. 106, 40 Stat. 411, known as the Trading with the Enemy Act.

This indictment, described as the "Washington indictment," contains two counts, each of which recites the existence, at the time of the offense charged, of a state of war between the United States and the Imperial German Government, and sets out that the Act of October 6, 1917, was in force, and that the Alien Property Custodian, an officer of the United States appointed

under authority of that act, had his office for the transaction of official business in the District of Columbia and at no other place. In the first count it is recited that the statute made it the duty of any person in the United States having custody or control of any property of or on behalf of an enemy of the United States to report the fact to the Alien Property Custodian within a period said to have expired December 20, 1917; and it is alleged that on October 6, 1917, and on each day thereafter down to and including the date of the indictment (December 2, 1918) appellant had the custody and control of certain property in the United States, that is to say, certain capital stock of the S. S. McClure Newspaper Corporation, a corporation of the State of New York, which, as appellant knew, belonged to the Imperial German Government; and that appellant "at the District of Columbia, and within the jurisdiction of this court" willfully failed, neglected, and omitted to report that fact to the Alien Property Custodian within the period prescribed by law and continuously down to and including the date of the indictment. The second count, in addition to the matter already stated, recites the provision of the act which made it the duty of any person in the United States indebted to an enemy of the United States to report the fact to the Custodian within a period prescribed; and avers that on October 6, 1917, and on each day thereafter down to, etc., appellant, then being within the United States, was indebted in the sum of $1,451,700 to the Imperial German Government as he well knew, and being so indebted "at the District of Columbia, and within the jurisdiction of this court" willfully failed, neglected and omitted to report the fact of such indebtedness to the Custodian.

Previous to the Washington indictment two indictments had been returned by the United States grand jury for the Southern District of New York, upon which

appellant was on bail awaiting trial. These were found August 2, 1918; one of them being against appellant alone and charging perjury in a report made by him December 4, 1917, to the Alien Property Custodian, in that, being required to state the property held by him for alien enemies and indebtedness owed by him to alien enemies, he swore that the only item in this category was a note for $100,000 made by him and payable to one Herman Sielcken, whereas it was alleged he was not indebted to Sielcken but was indebted to the Imperial German Government in the sum of $1,301,700, and held and had control of certain property belonging to that government, consisting of shares of the capital stock of the S. S. McClure Newspaper Corporation, a corporation of the State of New York, which facts appellant did not report to the Custodian. In the other New York indictment appellant and one Kaufmann were indicted for a conspiracy to omit to report to the Custodian the fact that appellant had in his custody and control certain property consisting of shares of the capital stock of the S. S. McClure Newspaper Corporation for and in behalf of the Imperial German Government, and that appellant was indebted to the said government in the sum of $1,431,700.

At the hearings before the Commissioner appellant admitted his identity and offered no evidence to meet the *prima facie* case made by producing an exemplified copy of the Washington indictment. On the other hand it was and is admitted in behalf of the Government that the New York indictments relate to the same transactions as the Washington indictment, and that they were pending in the Southern District of New York at the time the Washington indictment was found. To meet objections raised upon the hearing of the habeas corpus, the District Court embodied in the final order dismissing the writ clauses to the following effect:

(a) One giving the consent of that court to the removal of defendant to the District of Columbia notwithstanding the pendency of the indictments in the New York District;

(b) One directing a stay of removal pending appeal to this court;

(c) And one directing that, within thirty days after appellant had pleaded to the Washington indictment, the United States Attorney either for the Southern District of New York or for the District of Columbia should give him at least two weeks' notice as to which indictment it was intended to move first for trial.

Appellant's first point is that in a legal sense there was no probable cause to believe that he had been guilty of the offense charged in the Washington indictment because he could not be required to make a report to the Alien Property Custodian of the facts alleged in that indictment, since this would compel him in a criminal case to be a witness against himself, contrary to the provision of the Fifth Amendment to the Constitution of the United States in that behalf. As a basis for this contention appellant relies upon the uncontroverted averment in the first count of the Washington indictment that he held stock in the McClure Corporation for and on behalf of the German Government and did not report that fact to the Alien Property Custodian; adds to this the fact, said to have been established by his own evidence introduced before the Commissioner and not controverted by the Government, that during a considerable period he had traded for the benefit of and with the McClure Corporation, so that (it is said) he was guilty of trading with the enemy contrary to § 3 of the act; from which it is deduced that if, as required by § 7a of the act, he had reported to the Alien Property Custodian that he held the McClure Corporation stock for the German Government, as the first count of the Washington indictment alleges he was obliged to do, this disclosure would have tended to show that he

was guilty under § 3 of the act of trading without a license, because it would have furnished an essential link in the chain of evidence necessary to convict him of that offense.

It is at least questionable whether the point, assuming it to have merit, would have any application to the second count of the Washington indictment, which relates not to ownership of stock in the McClure Corporation, but to an indebtedness owing by appellant to the German Government and not reported.

And it is further doubtful whether there is foundation for the contention as applied to the first count, since appellant predicates his trading with the enemy solely upon the fact of his trading with the McClure Corporation, a New York corporation, whereas by § 2 of the act the definition of "enemy," for the purposes of the statute, is to include merely "any corporation incorporated within such territory of any nation with which the United States is at war or *incorporated within any country other than the United States* and doing business within such territory."

But consideration of these questions, or of any question raised under the Fifth Amendment, would be premature in this proceeding, since it is entirely plain that they do not go to show a "want of probable cause" within the meaning of the rule that is invoked. The accusatory averments of the indictment, admitted for the purposes of this proceeding to be true, make out a *prima facie* case of an offense against the laws of the United States indictable in the District of Columbia. *Hyde* v. *Shine*, 199 U. S. 62, 84; *Haas* v. *Henkel*, 216 U. S. 462, 481. Appellant's constitutional point merely raises a probability that a defense will be interposed, and that thus a controversy will arise, the determination of which is within the proper jurisdiction of the court in which the indictment was found. This furnishes no legal obstacle to the removal of the accused to that jurisdiction; nor may the writ of habeas cor-

pus be employed as an anticipatory writ of error. *Henry* v. *Henkel*, 235 U. S. 219, 229.

It is contended, indeed, that there was no probable cause to believe that the offense charged in the Washington indictment was committed within the District of Columbia; and this upon the ground that appellant was not personally present in the District at the time of the alleged offense, and that he was under no duty to make report there to the Alien Property Custodian. The Commissioner, however, found as a matter of fact that the Custodian's office was in the District of Columbia, and as the finding was supported by competent evidence the District Court properly held that it was not reviewable on writ of habeas corpus. That being so, the duty imposed by the statute to make report to the Alien Property Custodian involved the duty to make such report in the District of Columbia, and failure to make it was an offense against the United States committed in that District. *United States* v. *Lombardo*, 241 U. S. 73, 76; *New York Central &c. R. R. Co.* v. *United States*, 166 Fed. Rep. 267, 269.

It is contended that the removal of appellant to the District of Columbia amounts to an invasion of his constitutional right to a speedy trial on the New York indictments, and that the consent of the District Court for the Southern District of New York to such removal ought not to have been given without requiring from the representative of the Government a statement of reasons. These points raise no more than questions of discretion, the determination of which is not for our review.

Final order affirmed.

THE CHIEF JUSTICE dissents.